

**EXECUTION**

**MORTGAGE BOND SPV GUARANTEE**  
entered into between

between

**FREESTONE MORTGAGE BOND SPV SERIES 1 (RF) PROPRIETARY LIMITED**  
(Registration number 2004/000792/07)  
(as "Mortgage Bond SPV")

and

**THE TRUSTEE FOR THE TIME BEING OF THE EMIRA NOTE TRUST, CURRENTLY TMF  
CORPORATE SERVICES (SOUTH AFRICA) PROPRIETARY LIMITED**  
(as "Trustee" acting on behalf of and for the benefit of Group 1 Noteholders)

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## 1. DEFINITIONS AND INTERPRETATION

The headings of the clauses in this Mortgage Bond SPV Guarantee are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Mortgage Bond SPV Guarantee nor any clause hereof. Unless a contrary intention clearly appears:

- 1.1 words importing any one gender include the other two genders;
- 1.2 the singular include the plural and vice versa;
- 1.3 natural persons include created entities (corporate or unincorporated) and the state and vice versa; and
- 1.4 capitalised terms used in this Mortgage Bond SPV Guarantee which are not defined herein shall bear the meanings ascribed to them in the Terms and Conditions of the Group 1 Notes (or incorporated therein by reference), and the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
  - 1.4.1 "**Acceleration Notice**" means a written notice delivered to an Obligor pursuant to a Finance Document following an event of default (as defined therein) declaring the amounts due under that Finance Document to be immediately due and payable;
  - 1.4.2 "**Counter-Indemnity Agreement**" means the counter-indemnity agreement concluded between the Subsidiary Guarantor and the Mortgage Bond SPV, pursuant to which the Subsidiary Guarantor indemnifies and holds the Mortgage Bond SPV harmless in respect of claims made against the Mortgage Bond SPV under the Mortgage Bond SPV Guarantee;
  - 1.4.3 "**Final Discharge Date**" means the date on which all the Guaranteed Obligations have been unconditionally and irrevocably paid and discharged in full and no Secured Creditor has any further commitment to provide finance or any other form of financial accommodation to any person under any Finance Document;
  - 1.4.4 "**Finance Documents**" means:
    - (a) the Trust Deed;
    - (b) the Terms and Conditions of the Group 1 Notes;
    - (c) the Subsidiary Guarantee;
    - (d) the Security Documents; and
    - (e) any other document which is from time to time designated by the Trustee (on behalf of the Group 1 Noteholders) and the Issuer as a Finance Document,

and "**Finance Document**" means any of them, as the context may require;

- 1.4.5 "**Guaranteed 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 an Obligor may now or at any time hereafter owe or have towards the Secured Creditors under or in connection with any Finance Document to which it is a party;
- 1.4.6 "**Group 1 Noteholders**" means the holders of the Group 1 Notes;
- 1.4.7 "**Group 1 Notes**" means the Notes issued by the Issuer in respect of Series 2 and Series 3 of the Issuer's domestic medium term note programme, read together with the applicable pricing supplements in respect of such Notes, or, if the indebtedness of the Issuer under such Notes is refinanced at any time, any new financial indebtedness entered into in connection with that refinancing, and designated as such in the applicable pricing supplements;
- 1.4.8 "**Initial Issue Date**" means the Issue Date of the first issue of Group 1 Notes;
- 1.4.9 "**Issuer**" means Emira Property Fund Limited, a public company incorporated in accordance with the laws of South Africa, registration number 2014/130842/06;
- 1.4.10 "**Mortgage Bond SPV**" means Freestone Mortgage Bond SPV Series 1 (RF) Proprietary Limited, a company duly incorporated in accordance with the laws of South Africa, registration number 2004/000792/07;
- 1.4.11 "**Mortgage Bond SPV Guarantee**" means the guarantee in this document, including all schedules and annexure hereto;
- 1.4.12 "**Obligors**" means the Issuer and the Subsidiary Guarantor, and "**Obligor**" means any one of them, as the context requires;
- 1.4.13 "**Parties**" means the Mortgage Bond SPV and the Trustee acting on behalf of and for the benefit of the Group 1 Noteholders, and "**Party**" means, as the context requires, any of them;
- 1.4.14 "**Security Interest**" means any mortgage bond, notarial bond, pledge, security cession, lien, charge, hypothecation, assignment, deposit by way of security or any other agreement or arrangement having a similar effect (including set-off and title retention) but excluding statutory preferences;
- 1.4.15 "**Signature Date**" means the date of signature of this Mortgage Bond SPV Guarantee by the party which signs it last;
- 1.4.16 "**Subsidiary Guarantor**" means Freestone Property Investments (Proprietary) Limited, a private company incorporated in accordance with the laws of South Africa, registration number 2005/025542/07;

- 1.4.17 **"Terms and Conditions"** means the terms and conditions set out in the section headed *"Terms and Conditions of the Notes"* of the programme memorandum executed by the Issuer dated 1 July 2015, as amended or supplemented from time to time, read with the applicable pricing supplements, and in accordance with which the Notes will be issued;
- 1.4.18 **"Trustee"** means the trustee for the time being of the Emira Note Trust, acting on behalf of and for the benefit of the Group 1 Noteholders, which shall initially be TMF Corporate Services (South Africa) Proprietary Limited (Registration number 2006/013631/07), a company duly registered and incorporated in accordance with the company laws of South Africa.
- 1.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Mortgage Bond SPV Guarantee.
- 1.6 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.7 Where any term is defined within the context of any particular clause in this Mortgage Bond SPV Guarantee, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Mortgage Bond SPV Guarantee, notwithstanding that that term has not been defined in this interpretation clause.
- 1.8 Any reference to the **"assets"** of any person shall be construed as a reference to the whole or any part of the business, undertaking, property, shareholdings, assets and revenues (including any right to receive revenues and uncalled capital).
- 1.9 Where any matter requires the approval or consent of any Party such approval or consent shall be deemed not to have been given unless given in writing. Where any matter is required to be acceptable to any Party, that Party shall be deemed not to have accepted such matter unless its acceptance is communicated in writing, save as expressly provided for in this Mortgage Bond SPV Guarantee.
- 1.10 Any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time.
- 1.11 When any number of days is prescribed in this Mortgage Bond SPV Guarantee, those days shall be reckoned inclusively of the first and exclusively of the last day unless the last day of the number so calculated falls on a day which is not a Business Day, in which case the number of days shall be reckoned to the next succeeding Business Day.
- 1.12 Expressions defined in this Mortgage Bond SPV Guarantee shall bear the same meanings in schedules or annexures to this Mortgage Bond SPV Guarantee which do not themselves contain their own definitions.

- 1.13 The expiration or termination of this Mortgage Bond SPV Guarantee shall not affect such of the provisions of this Mortgage Bond SPV Guarantee as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.14 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- 1.15 Any reference in this Mortgage Bond SPV Guarantee to a Party includes, as the case may be, and shall be binding upon that Party's liquidator, trustee, executor, administrator, curator (in each case whether provisional or final), successors or permitted assigns and any representative of that person.
- 1.16 Any reference to any Party to this Mortgage Bond SPV Guarantee or any other document or any person shall include reference to such party's or person's successors and permitted assigns or transferees.
- 1.17 References to "including" and "in particular" shall not be construed restrictively but shall mean "including, without limitation to the generality of the foregoing" and "in particular, but without limitation to the generality of the foregoing" respectively.
- 1.18 Any reference herein to an agreement shall be to such agreement as amended, supplemented, varied, novated, consolidated or restated from time to time hereafter in accordance with its terms.

## **2. INTRODUCTION**

- 2.1 The Mortgage Bond SPV has agreed to guarantee, to the Trustee, the performance by each Obligor of the Guaranteed Obligations on the terms and conditions set out in this Mortgage Bond SPV Guarantee.
- 2.2 The Subsidiary Guarantor has agreed to enter into the Counter-Indemnity Agreement in favour of the Mortgage Bond SPV and to provide security in support thereof.

## **3. MORTGAGE BOND SPV GUARANTEE**

### **3.1 Guarantee and Counter-Indemnity Agreement**

- 3.1.1 With effect from the Initial Issue Date, the Mortgage Bond SPV hereby, as a principal obligor and not merely as a surety, irrevocably and unconditionally and on the basis of several and discrete obligations enforceable against it, whether or not any or all the Guaranteed Obligations are enforceable against an Obligor in respect thereof:
- (a) guarantees to the Trustee the full, complete and punctual performance by each Obligor of all the Guaranteed Obligations as and when they become due;
  - (b) undertakes to the Trustee that, whenever an Obligor fails to pay any amount of the Guaranteed Obligations in accordance with the

Finance Documents (and, if applicable, fails to remedy that default within any grace period allowed for under the Finance Documents) and an Acceleration Notice has been issued in terms of the relevant Finance Document, the Mortgage Bond SPV shall immediately on first demand by the Trustee pay that amount as if it were the principal obligor in respect of that amount (together with interest and default interest in respect thereof, as provided under the Finance Documents); and

- (c) as an independent and primary obligation, indemnifies the Trustee immediately on demand against any cost, loss or liability suffered by the Trustee if any Guaranteed Obligation is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability to which this Counter-Indemnity Agreement applies will be equal to the amount the Trustee would otherwise have been entitled to recover under the Mortgage Bond SPV Guarantee.

3.1.2 The Trustee agrees that payment by the Mortgage Bond SPV in terms of this Mortgage Bond SPV Guarantee shall discharge each Obligor's liability in like amount to the Trustee for the underlying obligations of each Obligor to the Trustee, to which that payment relates.

3.1.3 Subject to clause 3.1.5, the Mortgage Bond SPV undertakes to enforce the remedies available to it under the relevant Security Documents, and such other remedies as may be available to it at law, promptly upon any claim being made upon it in terms of this Mortgage Bond SPV Guarantee, provided that the Mortgage Bond SPV is not obliged to take any action (including the exercise of any right, power, discretion or obligation) until the Trustee places it in funds equivalent to the amount which the Mortgage Bond SPV determines may become payable by it in respect of any liabilities, costs or expenses which will or may arise from the Mortgage Bond SPV taking that action, or it is indemnified by the Trustee to its reasonable satisfaction, in a form acceptable to it, in respect of any such liabilities, costs or expenses. Any amounts advanced to the Mortgage Bond SPV pursuant to this clause shall be recovered through the enforcement by the Mortgage Bond SPV of its rights under the Counter-Indemnity Agreement.

3.1.4 Without limiting its rights, powers and discretions, the Mortgage Bond SPV will not be required to exercise any right, power or discretion in terms of this Mortgage Bond SPV Guarantee, the Counter-Indemnity Agreement and/or the other Security Documents without the specific written instructions of the Trustee.

3.1.5 The Mortgage Bond SPV may engage and pay for (using the funds obtained pursuant to clause 3.1.3) the advice or services of any lawyers, accountants or other experts whose advice or services may seem to the Mortgage Bond SPV to be reasonably necessary in relation to any of the provisions of any Finance Document, act or rely in good faith upon the opinion or advice of or any information obtained from any lawyer, accountant, valuer, surveyor, broker, auctioneer or other expert of recognised standing commissioned by the Mortgage Bond SPV, and, in the absence of gross negligence, wilful misconduct or fraud on the part of

the Mortgage Bond SPV in so doing, the Mortgage Bond SPV shall not be responsible for any loss occasioned or arising by so acting or relying.

### **3.2 Continuing guarantee**

The Mortgage Bond SPV Guarantee is a continuing guarantee which shall remain in force and extend to the ultimate balance of all the Guaranteed Obligations, regardless of any intermediate payment or discharge in whole or in part before the Final Discharge Date.

### **3.3 Reinstatement**

3.3.1 If any payment by an Obligor, any discharge (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) or arrangement made in whole or in part on the faith of any payment, security or other disposition, is avoided or reduced or must be repaid, restored or reinstated on insolvency, liquidation, administration or business rescue proceedings or any similar event:

- (a) the liability of the Mortgage Bond SPV under the Mortgage Bond SPV Guarantee will continue or be reinstated; and
- (b) the Trustee will be entitled to recover the value or amount of that payment, discharge or arrangement from the Mortgage Bond SPV,

as if that payment, discharge or arrangement had not occurred.

3.3.2 The Trustee may, without prejudice to its rights under the Mortgage Bond SPV Guarantee, concede or compromise any claim that a payment, security or other disposition made to it, under another Finance Document or otherwise, is liable to avoidance or restoration.

### **3.4 Waiver of defences**

3.4.1 The obligations of the Mortgage Bond SPV under this Mortgage Bond SPV Guarantee shall not be prejudiced, affected or diminished by an act, omission, circumstance, matter or thing which, but for this provision, might otherwise operate to reduce, release or prejudice any of the Mortgage Bond SPV's obligations under this Mortgage Bond SPV Guarantee (whether or not known to it or the Trustee), including:

- (a) any time, waiver or consent granted to, or composition with, the Obligor or other person;
- (b) the release of any person under the terms of any composition or arrangement with any creditor of the Obligor or any other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;



- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any legal disability, incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Obligor or other person;
- (f) any amendment (however fundamental and whether or not more onerous) of a Finance Document or any other document or security (including, without limitation, any extension of the due date for performance of any Guaranteed Obligation or any increase or replacement of any facility);
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or security;
- (h) any liquidation, winding-up, insolvency, judicial management, business rescue proceedings or similar proceedings in respect of the Obligor, the Mortgage Bond SPV, the Trustee or any other person;
- (i) the Trustee or a Group 1 Noteholder receiving a dividend or benefit in any insolvency, liquidation or judicial management or any compromise or composition, whether in terms of any statutory enforcement or the common law;
- (j) the Trustee or a Group 1 Noteholder granting any indulgences to the Obligor or not exercising any one or more of its rights under the Finance Documents, either timeously or at all; and/or
- (k) any other fact or circumstance arising on which the Mortgage Bond SPV might otherwise be able to rely on a defence based on prejudice, waiver or estoppel.

3.4.2 The Trustee shall not be required to investigate the powers or authority of the Obligor or its directors, officers or agents.

### 3.5 **Immediate recourse**

The Mortgage Bond SPV waives any right it may have, if an Acceleration Notice has been issued, of first requiring the Trustee to proceed against or enforce any other right or security or claim payment from the Obligor or any person, before claiming from the Mortgage Bond SPV under this Mortgage Bond SPV Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### 3.6 **Additional rights**

This Mortgage Bond SPV Guarantee is in addition to and is not in substitution for or in any way prejudiced by:

- 3.6.1 any other rights the Trustee has, or may at any time in the future have, against the Mortgage Bond SPV, an Obligor or any other person; or
- 3.6.2 any other security or collateral now or subsequently held by the Trustee (which the Trustee may release as it sees fit, without prejudice to its rights hereunder).

**3.7 Renunciation of benefits**

The Mortgage Bond SPV hereby renounces any benefits to which it may as Mortgage Bond SPV in law be entitled, including, without limitation, the benefits of excussion, division, cession of action, revision of accounts and no value received, and declares that it understands the meaning of each such legal exception and the effect of such renunciation.

**3.8 Maximum recourse**

The maximum aggregate amount payable by the Mortgage Bond SPV under the Mortgage Bond SPV Guarantee shall be limited to the net proceeds of recovery realised by the Mortgage Bond SPV upon enforcement of its rights and remedies against each Obligor under the Counter-Indemnity Agreement and the Security granted in terms of the Security Documents, limited to a maximum aggregate liability not exceeding the total amount of the Guaranteed Obligations. The Mortgage Bond SPV shall not be required to make any payments under this Mortgage Bond SPV to the Trustee until such time as it has received the proceeds of the recovery on enforcement by the Mortgage Bond SPV as aforesaid.

**4. REPRESENTATIONS AND WARRANTIES**

**4.1 Representations and warranties**

4.1.1 The Mortgage Bond SPV makes the representations and warranties set out in this clause 4 to the Trustee. References in this clause to it or its, unless the context otherwise requires, is a reference to the Mortgage Bond SPV.

4.1.2 The Trustee 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 Trustee to enter into the Finance Documents.

**4.2 Status**

4.2.1 The Mortgage Bond SPV is a limited liability company, duly incorporated and validly existing under the laws of South Africa.

4.2.2 It has the power to own its assets and carry on its business as it is being conducted.

### **4.3 Capacity, powers and authority**

The Mortgage Bond SPV has the legal capacity and power to enter into and perform, and has taken all necessary action to authorise its entry into and the performance of, this Mortgage Bond SPV Guarantee and any other Finance Document to which it is a party and all the transactions contemplated thereby.

### **4.4 Legal validity**

4.4.1 This Mortgage Bond SPV Guarantee and any other Finance Document to which it is a party are the legally binding, valid and enforceable obligations of the Mortgage Bond SPV.

4.4.2 This Mortgage Bond SPV Guarantee and any other Finance Document to which it is a party are in the proper form for its enforcement under all applicable laws and regulations.

### **4.5 No conflict with other obligations**

The entry into and performance by the Mortgage Bond SPV of, and the transactions contemplated by, this Mortgage Bond SPV Guarantee and any other Finance Document to which it is a party do not and will not:

4.5.1 conflict with any law or regulation applicable to it;

4.5.2 conflict with the constitutional documents of the Mortgage Bond SPV; or

4.5.3 conflict with any agreement or document which is binding upon the Mortgage Bond SPV or any of its assets;

4.5.4 result in any liability on the part of the Trustee to any third party or require the creation or result in the enforceability of any Security Interest over any asset of the Mortgage Bond SPV in favour of a third party.

### **4.6 Authorisations**

All authorisations required by the Mortgage Bond SPV:

4.6.1 in connection with its entry into, performance and the validity and enforceability of, and the transactions contemplated by, this Mortgage Bond SPV Guarantee and any other Finance Document to which it is a party have been obtained or effected (as appropriate) and are in full force and effect; and

4.6.2 to carry on its business in the ordinary course and in all material respects as it is being conducted have been obtained or effected (as appropriate) and are in full force and effect.

### **4.7 Winding-up, legal proceedings and solvency**

As of the Signature Date of this Mortgage Bond SPV Guarantee:

4.7.1 the Mortgage Bond SPV 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, re-organisation or commencement of business rescue proceedings, for the enforcement of any Security Interest 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; and

- 4.7.2 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 Mortgage Bond SPV.

#### 4.8 **Repetition**

The Mortgage Bond SPV makes each of representations and warranties set out in this clause 4 on the Signature Date of this Mortgage Bond SPV Guarantee. Each such representation and warranty shall survive the execution of this Mortgage Bond SPV Guarantee and, unless expressed to be given on a specific date, shall be deemed to be repeated by the Mortgage Bond SPV in favour of the Trustee on each day following the Signature Date of this Mortgage Bond SPV Guarantee until the Final Discharge Date. When a representation and warranty is repeated, it is made with reference to the circumstances existing at the time of repetition.

### 5. **UNDERTAKINGS BY THE MORTGAGE BOND SPV**

- 5.1 If requested by the Trustee, the Mortgage Bond SPV shall promptly provide to the Trustee such information concerning the financial affairs of the Mortgage Bond SPV (including the financial statements of the Mortgage Bond SPV) as any Trustee may require.
- 5.2 The Mortgage Bond SPV shall obtain and promptly renew before expiry all authorisations that may be required, from time to time, under any applicable law or regulation to enable the Mortgage Bond SPV to perform its obligations under this Mortgage Bond SPV Guarantee punctually and in full and to maintain and protect the validity and enforceability of those obligations. The Mortgage Bond SPV shall comply with all the terms and conditions of those authorisations and, upon request by the Trustee, shall promptly provide copies of any such authorisation to the Trustee.
- 5.3 The Mortgage Bond SPV undertakes not to issue any guarantee other than this Mortgage Bond SPV Guarantee, without the prior written consent of the Trustee.

### 6. **PAYMENTS**

#### 6.1 **Place**

All payments by the Mortgage Bond SPV under this Mortgage Bond SPV Guarantee must be made to the Trustee (on behalf of the Group 1 Noteholders) to its account at such office or bank in South Africa as it may notify to the Mortgage Bond SPV for this purpose by not less than five Business Days' prior notice.

**6.2 Currency of account**

Each amount payable under this Mortgage Bond SPV Guarantee is payable in Rand.

**6.3 Funds**

Payments under this Mortgage Bond SPV Guarantee must be made for value on the due date in immediately available and freely transferable funds, or at such times and in such funds as the Trustee may specify to the Mortgage Bond SPV as being customary at the time for the settlement of transactions in Rand in the place for payment.

**6.4 No set-off or deduction**

All payments made by the Mortgage Bond SPV under this Mortgage Bond SPV Guarantee must be calculated and made without (and free and clear of any deduction for) set-off or counterclaim.

**6.5 Business Days**

If a payment under this Mortgage Bond SPV Guarantee is due on a day which is not a Business Day, the due date for that payment will instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not) or whatever day the Trustee reasonably determines is market practice.

**7. CALCULATIONS AND CERTIFICATES**

**7.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Mortgage Bond SPV Guarantee, the entries made in the accounts maintained by the Trustee or a Group 1 Noteholder are *prima facie* proof of the matters to which they relate.

**7.2 Certificates and determinations**

A certificate signed by any officer, who is duly authorised to do so, of the Trustee (whose authority and appointment it shall not be necessary to prove) setting forth the amount of any Guaranteed Obligation shall set out in reasonable detail the calculation thereof and be prima facie evidence of such amount as against the Mortgage Bond SPV

**8. STIPULATION FOR THE BENEFIT OF THE GROUP 1 NOTEHOLDERS**

**8.1** This Mortgage Bond SPV Guarantee constitutes a stipulation in favour of each of the Group 1 Noteholders who do not sign this Mortgage Bond SPV Guarantee and shall be deemed to have been accepted by each of them and to constitute a binding agreement with each of them (notwithstanding that such Group 1 Noteholders shall not have executed this document) upon the issue or transfer, as the case may be, of the Group 1 Notes to such Group 1 Noteholders.

- 8.2 On the Signature Date, the Mortgage Bond SPV shall deliver the original signed Mortgage Bond SPV Guarantee to the Trustee which has, in accordance with the undertaking annexed to this Mortgage Bond SPV Guarantee as **Schedule 1**, undertaken to hold such original Mortgage Bond SPV Guarantee on behalf of the Group 1 Noteholders and to make certified copies of this Mortgage Bond SPV Guarantee available to Group 1 Noteholders upon written request by Group 1 Noteholders, in accordance with such undertaking.
- 8.3 By signing this Mortgage Bond SPV Guarantee, the Mortgage Bond SPV accepts the benefit of the stipulations in its favour in the Terms and Conditions of the Group 1 Notes, is deemed to have notice of the Terms and Conditions of the Group 1 Notes and binds itself to those provisions of the Terms and Conditions of the Group 1 Notes which confer rights and/or impose obligations on the Mortgage Bond SPV.
- 8.4 To the extent that any splitting of claims arises as a result of the provisions of this clause 8, the Mortgage Bond SPV hereby consents to such splitting of claims.

## 9. MISCELLANEOUS

- 9.1 The rights of the Trustee under this Mortgage Bond SPV Guarantee:
- 9.1.1 may be exercised as often as necessary; and
- 9.1.2 may be waived only in writing and specifically.
- 9.2 Delay in exercising or non-exercise of any such right is not a waiver of that right.

## 10. NOTICES

- 10.1 The Parties choose as their *domicilia citandi at executandi* ("**domicilium**") for all purposes under this Mortgage Bond SPV Guarantee, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses or at such other address, not being a post office box or *poste restante*, of which the Party concerned may notify the other in writing:

- 10.1.1 the Mortgage Bond SPV

Address:	c/o FirstRand Bank Limited
	1 Merchant Place
	Cnr Fredman Drive & Rivonia Road
	Sandton
	2196
Telefax:	011 282 8328
E-mail:	nokuthula.lubisi@rmb.co.za
Attention:	Nokuthula Lubisi

Physical: 3<sup>rd</sup> Floor  
200 on Main  
Cnr Main Street and Bowwood Roads  
198 Main Street  
Claremont  
7708

Telefax: +27 86 557 1217

E-mail: mandy.collis@tmg-group.com

Attention: Mandy Collis;

10.1.2 Trustee:

Physical address 3<sup>rd</sup> Floor  
200 on Main  
Cnr Main Street and Bowwood Roads  
198 Main Street  
Claremont  
7708

Telefax +27 86 557 1217

E-mail: mandy.collis@tmg-group.com

Attention: Mandy Collis;

10.2 Any Party may at any time, by notice in writing to the other Parties, change its *domicilium* to any other address in the Republic of South Africa which is not a post office box or post restante.

10.3 Any notice given in connection with this Mortgage Bond SPV Guarantee shall, save where a particular form of notice is stipulated, be:

10.3.1 delivered by hand; or

10.3.2 sent by courier; or

10.3.3 sent by telefax (if the *domicilium* includes a telefax number),

10.3.4 sent by e-mail, provided that an e-mail address has been provided for in clause 10.1 above,

to the *domicilium* chosen by the Party concerned.

10.4 A notice given as set out above shall be deemed to have been duly given (unless the contrary is proved):

10.4.1 if delivered by hand before 16h30, on the date of delivery, or otherwise the immediately following Business Day; or

- 10.4.2 if sent by courier and delivered before 16h30, on the date of delivery by the courier service concerned, or otherwise the immediately following Business Day; or
- 10.4.3 if sent by telefax, on the expiration of 24 hours after the time of transmission, unless actually received on the date of transmission; or
- 10.4.4 if sent by e-mail, on the immediately following Business Day.
- 10.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to such party.

## **11. LAW AND JURISDICTION**

- 11.1 This Mortgage Bond SPV Guarantee shall be governed by and construed in accordance with the laws of South Africa.
- 11.2 The Mortgage Bond SPV agrees that any legal action or proceedings arising out of or in connection with this Mortgage Bond SPV Guarantee may be brought against it in the High Court of South Africa, Gauteng Local Division, Johannesburg (or any successor to that court) and irrevocably submits to the non-exclusive jurisdiction of such court. The Mortgage Bond SPV irrevocably waives any objection it may now or hereafter have that such action or proceeding has been brought in an inconvenient forum. Nothing herein shall affect the right of the Trustee to serve process in any manner permitted by law. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Trustee to take proceedings against the Mortgage Bond SPV in whatever other jurisdiction the Trustee consider appropriate nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **12. COUNTERPARTS**

This Mortgage Bond SPV Guarantee may be executed in two or more counterparts all of which, when read together, shall constitute one and the same instrument.

## **13. SUCCESSORS AND ASSIGNS**

- 13.1 This Mortgage Bond SPV Guarantee shall be binding on and inure to the benefit of the Mortgage Bond SPV and the Trustee and their respective successors, transferees and permitted assigns.
- 13.2 The Mortgage Bond SPV shall not be entitled to cede any of its rights or transfer or purport to transfer any of its obligations hereunder without the prior written consent of the Trustee.
- 13.3 The Trustee shall be entitled at any time to cede all or any of their rights and to delegate all or any of their obligations hereunder to any third party whomsoever. The Mortgage Bond SPV hereby unconditionally and irrevocably consents to the splitting of claims against it which may result from or pursuant to or in consequence of any such cession and/or delegation by the Trustee in terms of this Mortgage Bond SPV Guarantee.



#### **14. WHOLE AGREEMENT, NO AMENDMENT**

- 14.1 This Mortgage Bond SPV Guarantee constitutes the whole agreement between the Parties relating to the subject matter hereof.
- 14.2 No amendment or consensual cancellation of this Mortgage Bond SPV Guarantee or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Mortgage Bond SPV Guarantee and no settlement of any disputes arising under this Mortgage Bond SPV Guarantee and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Mortgage Bond SPV Guarantee or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Mortgage Bond SPV Guarantee shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 14.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Mortgage Bond SPV Guarantee or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Mortgage Bond SPV Guarantee, shall operate as an estoppel against any Party in respect of its rights under this Mortgage Bond SPV Guarantee, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Mortgage Bond SPV Guarantee.
- 14.4 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

#### **15. INDEPENDENT ADVICE**

The Mortgage Bond SPV acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Mortgage Bond SPV Guarantee and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Mortgage Bond SPV acknowledges that all of the provisions of this Mortgage Bond SPV Guarantee and the restrictions herein contained have been negotiated as between it and the other parties hereto and are part of the overall intention of the Parties in connection with this Mortgage Bond SPV Guarantee.

#### **16. COSTS**

The costs of drafting this Mortgage Bond SPV Guarantee shall be borne by the Issuer.

#### **17. NON-PETITION**

The Trustee agrees that it shall not, institute or vote in favour of, any steps or legal proceedings for, the winding-up, liquidation, de-registration, business rescue or any proceedings having a similar effect, in respect of the Mortgage Bond SPV.

SIGNATURE PAGE

THE MORTGAGE BOND SPV

 NP/ies

For and on behalf of:

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

**Gideon Joubert**  
Chief Financial Officer  
Investment Banking Division

Name: **Rand Merchant Bank**  
~~A division of FirstRand Bank Limited~~

Date: 14 August 2015

For and on behalf of:

**THE TRUSTEE FOR THE TIME BEING  
OF THE EMIRA NOTE TRUST,  
CURRENTLY TMF CORPORATE  
SERVICES (SOUTH AFRICA)  
PROPRIETARY LIMITED**

Name: \_\_\_\_\_

Date: \_\_\_\_\_

SIGNATURE PAGE

THE MORTGAGE BOND SPV

\_\_\_\_\_  
For and on behalf of:  
**FREESTONE MORTGAGE BOND SPV  
SERIES 1 (RF) PROPRIETARY  
LIMITED**

Name: \_\_\_\_\_

Date: \_\_\_\_\_



\_\_\_\_\_  
For and on behalf of:  
**THE TRUSTEE FOR THE TIME BEING  
OF THE EMIRA NOTE TRUST,  
CURRENTLY TMF CORPORATE  
SERVICES (SOUTH AFRICA)  
PROPRIETARY LIMITED**

Name: A OLLIS

Date: 14 8 2015

**MORTGAGE BOND SPV GUARANTEE CUSTODY LETTER**

Group 1 Noteholders of the Group 1 Notes issued in terms of the domestic medium term note programme of Emira Property Fund Limited

Dear Sirs

**Mortgage Bond SPV Guarantee issued on or about the date hereof by Freestone Mortgage Bond SPV Series 1 (RF) Proprietary Limited (the "Mortgage Bond SPV") in favour of the Trustee of the Emira Note Trust, on behalf of the Group 1 Noteholders of the Group 1 Notes issued in terms of the domestic medium term note programme of Emira Property Fund Limited (the "Mortgage Bond SPV Guarantee")**

We refer to the Mortgage Bond SPV Guarantee. Capitalised terms not specifically defined in this undertaking shall have the meaning assigned to such terms in the Mortgage Bond SPV Guarantee.

We hereby undertake in favour of each of the Group 1 Noteholders to receive and hold in custody the original signed Mortgage Bond SPV Guarantee to be delivered to us by the Mortgage Bond SPV on the Signature Date of the Mortgage Bond SPV Guarantee. This undertaking shall not imply any relationship of trust, duty of care or fiduciary obligation on our part in relation to the Mortgage Bond SPV Guarantee or any other Finance Document.

We undertake, upon the written request by any Group 1 Noteholder and at the cost of such Group 1 Noteholder, to make available to the Noteholder, a certified copy of the Mortgage Bond SPV Guarantee within 2 Business Days of receipt of such written request.

Upon the termination of the Mortgage Bond SPV Guarantee in accordance with its terms and conditions, we shall deliver the original Mortgage Bond SPV Guarantee to the Mortgage Bond SPV.

This undertaking constitutes an irrevocable stipulation in favour of the Group 1 Noteholders who have not signed the Mortgage Bond SPV Guarantee and shall be deemed to have been accepted by them, *mutatis mutandis*, in the manner envisaged in clause 8 of the Mortgage Bond SPV Guarantee.

Yours faithfully

**For TMF Corporate Services (South Africa) Proprietary Limited, in its capacity as Trustee**

Date: