

SUB AGREEMENT TO THE MAIN AGREEMENT

Between

Company

(Registration number: _____)

(Herein referred to as “the Employer”)

and

FIRSTRAND BANK LIMITED, REPRESENTED BY FNB HOME FINANCE

(Registration number: 1929/001225/06)

(Hereinafter referred as the “the Bank”)

WHEREAS:

The _____ Fund (Registration number: _____) (Herein referred to as "the Fund"); _____ (Registration number: _____) (herein referred to as "the Fund Administrator") and FirstRand Bank Limited (Registration number: 1929/001225/06) (represented by FNB Home Finance) have entered into a Smart Housing Plan Surety Agreement dated _____ whereby the Bank shall provide Smart Housing Loans to qualifying Members of the Fund in accordance with the Pension Funds Act 24 of 1956, the Fund rules and the Bank's credit policies that are applicable to the Smart Housing Plan Loan Product.

1. DEFINITION AND INTERPRETATION

In this Agreement the following words and phrases shall have the following meanings set out below, unless the context requires otherwise: -

- 1.1. **"Act"** means the Pension Funds Act, No. 24 of 1956, as amended.
- 1.2. **"Agreement"** means this Agreement together with all the annexures, applications, letters, schedules, addendums, and notices given from time to time, all read together and signed by the parties to this Agreement.
- 1.3. **"Authority to Deduct"** means the confirmatory authorisation provided by the Employee in the agreement between the employee and the Bank, authorising the Employer to make deductions from the employee's salary or wage.
- 1.4. **"Bank"** means FirstRand Bank Limited (Registration Number: 1929/001225/06), herein represented by FNB Home Finance, a Business Unit of First National Bank, its successors-in-title, or assigns. First National Bank – a Division of FirstRand Bank Limited. An Authorised Financial Services and Credit Provider (NCRCP20).
- 1.5. **"Confidential Information"** all information of a confidential, sensitive or proprietary nature, including but not limited to the terms of this Agreement, financial information, marketing and business strategies, minutes of meetings, corporate memoranda, and other information relating to either the Fund, the Fund Administrator, the Employer or the Bank or to Employees or members, including without limitation certain personal information of Employees, members, the Employer and/or third parties.
- 1.6. **"Credit Agreement"** means an agreement between a credit provider and a consumer concluded under the National Credit Act 34 of 2005 and shall bear the same meaning in this Agreement as they bear in the National Credit act.
- 1.7. **"Data"** shall mean any data, including any personal data as defined in the Protection of Personal Information Act, 4 of 2013, and data and personal information as defined in the Electronic Communications and Transactions Act,

25 of 2002 any customer data and any other legislation related to the protection of data supplied to the Fund, the Fund Administrator, the Employer, or any third party, by the Bank or stored, collected, collated, accessed or processed on behalf of the Bank by the Fund, the Fund Administrator and the Employer.

- 1.8. **“Effective Date”** shall mean _____, irrespective of the actual date of signature of this Agreement.
- 1.9. **“Employee”** means employee permanently or temporarily employed by the Employer.
- 1.10. **“Employer”** means who is a participant in the Fund, including its subsidiaries and associated companies
- 1.11. **“Fund Administrator”** means the Administrator approved in terms of section 13B of the Act, appointed by the Trustees of the Fund to administer the fund from time to time.
- 1.12. **“Fund/s”** means South African Reserve Bank Retirement Fund (Registration number: 12/8/31495/R) registered as retirement fund organisation in accordance with the Act.
- 1.13. **“Fund Rules”** means the registered rules of the Fund.
- 1.14. **“Loan application”** means the Bank documentation required to apply for a Smart Housing Plan Loan.
- 1.15. **“Loan(s)”** means the Loans granted by the Bank to the Members pursuant to this Agreement.
- 1.16. **“Member”** means an employee of the Employer who has been admitted to the Fund in accordance with the eligibility requirements set out in the Fund Rules.
- 1.17. **“NCA”** means the National Credit Act No 34 of 2005, as amended.
- 1.18. **“Parties”** means the parties to this Agreement, being the Bank, and the Employer, and “Party” will mean either the Bank, or the Employer, as the case may be.
- 1.19. **“Repayment Schedule”** means the document given to the Employer’s payroll officer which contains details of all the monthly instalments due by all the Members.

- 1.20. In this Agreement, unless the context otherwise indicates:
 - 1.20.1. the words **‘dependent’, ‘officer’, ‘principal officer’, ‘pension fund’, ‘registered’, ‘retirement date’ and ‘rules’** shall bear the same meaning in this agreement as they bear in the Act.

- 1.20.2. The headings to clauses are for convenience only, and shall not be taken into account in the interpretation of this Agreement.
- 1.20.3. Reference to "**days**" shall be construed as calendar days, unless qualified by the word "**business**", in which instance a "**business day**" shall be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.20.4. Reference to one gender includes the others, a reference to a natural person includes a juristic person, a reference to the singular includes the plural, and vice versa.

2. OBLIGATIONS OF THE EMPLOYER

- 2.1. In respect of payroll deductions: -
- 2.1.1. Upon receipt of the notification of approval of the loan by the Bank and provided that the Employee has given the Bank Authority to Deduct in respect of the Employee, record the repayment instalments required to be deducted on its payroll data, as and when the Authority to Deduct is given, and shall deduct and make payment of such instalments to the Bank in accordance with the provisions of clause 2.1.2 and 2.1.3.
- 2.1.2. On or before the last calendar day of the month, pay to the Bank, by way of payroll deduction an amount representing the aggregate of all the monthly instalments due by the Members as detailed on the repayment schedules furnished by the Bank to the Employer on a monthly basis in respect of the Members, which schedule shall contain a summary of the repayments in respect of each Member.
- 2.1.3. Employer irrevocably undertakes and warrants to the Bank, subject to receipt of the applicable Authority to Deduct and the acceptable and valid reasons for non-deduction in clause 2.5 below, that it shall deduct from Employees' salary / wages the instalments due by the Members to the Bank under their loans and shall pay into the following bank account nominated by the Bank by EFT.

Account Name:	FNB HOUSING FINANCE
Account No:	62019608514
Branch:	Bank City
Branch Code:	255005

- 2.2. When the Employer receives a repayment schedule on or before its monthly salary run cut- off date (which date the Employer shall advise the Bank of), the

Employer shall make the first monthly deduction from the Member's salary in that same month and pay same over to the Bank.

- 2.3. Should the monthly instalments due by any or all of the Members increase or decrease for any reason, the Bank shall advise the Employer of such change as soon as reasonably practical and the Employer shall pay such increased or decreased instalments to the Bank in the same month, provided that if notice of the increase or the decreased instalments is not received by the Employer in time to amend the monthly deductions then the Employer shall give effect to the increased or decreased instalment on the salary run in the following month;
- 2.4. Notify the Bank, the Fund and the Fund Administrator, should a Member no longer be employed by the Employer for any reason or where the member is in receipt of income disability benefit in terms of the policy issued to the Principal Employer and as soon as it becomes aware of this fact and provide the Bank with the debit order authorisation signed by the Member if the Member opts to effect future repayments in this manner.
- 2.5. The Employer, when effecting the monthly instalment repayment, shall forward a schedule on or the first day after its salary run date, reflecting the names of the Members from whom deductions were made and the amounts, and the names of Members from whom deductions were not made and the reasons for the non- deduction. Valid reasons for non-deduction include, but are not limited to, insufficient salary paid due to short time, maternity leave or sick leave exhausted, payments not coinciding with the instructions set out in the Authority to Deduct, or any other reason that has been accepted by the Bank in writing.
- 2.6. Should the Employer fail to make a deduction without a valid reason, as listed in clause 2.3. above, the non-deduction will constitute a breach in terms of clause 7 of this Agreement. However, any non- deduction, whether valid or not, will constitute a breach by the Member of the Credit Agreement between the Bank and the Member.
- 2.7. The Employer warrants that it has complied with all applicable legislation which governs the Employment relationship in place. A breach of this warranty will be a material breach of this agreement.
- 2.8. The Employer is indemnified and will be held harmless against all/any claim/s that may arise from the Fund or the Members pursuant to the incorrect details in respect of the Employer's obligations having been furnished to the Employer.

3. DISBURSEMENT OF LOAN

- 3.1. The Bank shall pay the amount of the Loan in accordance with the instructions contained in the Smart Housing Plan Loan Application, which payment shall be made by way of electronic credit to the Member's account.

- 3.2. The Bank shall not affect any payments to third parties.
- 3.3. The Bank shall ensure that at the time the Loan is granted, the monthly instalment shall meet all the necessary statutory and regulatory compliance, including but not limited to specific compliance with the provisions of the NCA. The Bank shall ensure that the monthly instalments are in line with the Bank's policy requirements as may be determined from time to time.

4. REPAYMENTS

- 4.1. The Loan is repayable in equal monthly instalments, (the minimum monthly instalment being R100 (One Hundred Rand) or such other amount as agreed to between the Bank and the Member from time to time), such monthly payments being in reduction of capital and finance charges.
- 4.2. The Loan shall be repayable in full on the Member's termination of employment for whatever reason, or on the member receiving an income disability benefit in terms of the policy issued. Unless the Member elects to effect future repayments via debit order, in which case the Loan shall be repayable in full when Member leaves the Fund.
- 4.3. In instances where the Employer-Employee relationship has terminated or where the member is in receipt of income disability benefit in terms of the policy issued to the Principal Employer and the Employee has opted to service the Loan by way of debit order in accordance with Clause 4.2. above, and the debit order returns as unpaid for 3 consecutive months, the Loan shall be repayable in full by the Fund and in favor of the Bank.

5. CONFIDENTIALITY

- 5.1. Both the Bank and the Employer acknowledge that they may from time to time become privy to Confidential Information, the disclosure of which to third parties may be damaging to the discloser of the Confidential Information or to Members.
- 5.2. Both the Employer and the Bank therefore agree to hold such Confidential Information in strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to persons reasonably requiring such Confidential Information, and not to release or disclose it to any other party, unless so required by law.
- 5.3. Confidential Information is not meant to include any information which, at the time of disclosure is known by the public and/or any competitors of either party.
- 5.4. Neither party shall use the names, trademarks, or trade names, whether

registered nor not, of the other party in publicity releases or advertising or in any other manner including customer lists, without having secured the prior written approval of the other party.

- 5.5. The parties' obligations of confidentiality under this Agreement shall survive the termination of this Agreement for any reason.
- 5.6. The Bank and the Employer each indemnify one another against any unauthorised disclosure of Confidential Information by either of them or by their agents, service providers, representatives or appointees, provided that the Bank and the Employer exercise the same standard of care with the other party's Confidential Information as they do with their own.

6. DATA PROTECTION

- 6.1. The parties acknowledge that they may be exposed to the Data of each other's employees, customers and clients ("the Disclosing Party").
- 6.2. The parties specifically record that all Data provided by the other, or to which the parties may be exposed in connection with this Agreement, or the performance hereof, shall constitute Confidential Information and where applicable, Intellectual Property belonging to the Disclosing Party.
- 6.3. The parties hereby warrant that they shall at all times strictly comply with all applicable legislation and with all the provisions and requirements of the Bank's data protection policies and procedures which may be in force from time to time.
- 6.4. The parties hereby warrant and undertake that they shall not, at any time, copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Data for any purpose other than with the express prior written consent of the Disclosing Party.
- 6.5. The parties warrant that they shall immediately inform the Disclosing Party, should any Data they have access to be compromised in any manner or form. The parties further undertake to also immediately inform the Disclosing Party as to how they will manage such compromise and what steps will be taken to

rectify the situation to the satisfaction of the Disclosing Party.

6.6. The parties further warrant that they shall ensure that all their systems and operations which they use, including all systems on which Data is copied, compiled, collated, processed, transmitted, stored, collected, mined, altered, or deleted or otherwise used, shall at all times be of a minimum standard required by law and be of a standard no less than the standards which are in compliance with the international best practice for the protection, control and use of Data.

6.7. The parties' obligations under this clause will survive the termination of this Agreement for any reason.

7. BREACH

7.1. In the event of any of the parties ("the Defaulting Party") committing a breach of any of the terms, conditions or warranties contained in this Agreement, any other party to this Agreement ("the Aggrieved Party") shall give the Defaulting Party notice of the alleged breach, and shall notify all other parties to this Agreement of the alleged breach, and should the Defaulting Party fail to remedy such breach within a period of 10 (Ten) days after receipt of a written notice from another party calling upon the Defaulting Party to remedy the breach, then the Aggrieved Party shall be entitled, without limiting any other rights that party may have in law, to claim specific performance or to cancel this agreement and institute a claim for damages against the Defaulting Party.

8. TERMINATION

8.1. This Agreement shall commence on the Effective Date and shall continue indefinitely although either party may on 60 (Sixty) days' notice to the other party, terminate this Agreement, provided that all the obligations of the parties as set out in this Agreement and as they pertain to Loan agreements already concluded shall remain in full force and effect.

9. NOTICES

9.1. Any notices or communications required or permitted to be given in terms of this Agreement, will be valid and effective only if sent by email and confirmed in writing, and delivered by hand or fax to the addresses as set out in clause 10 below.

10. ADDRESSES FOR SERVICES

- 10.1. The Parties hereby nominate the address and representatives as set out below to which all notices and other communications must be delivered relating to this Agreement:

The Bank

Address: 1 First Place, 3rd Floor, Bank City, Johannesburg
Representative: FNB Legal Department

The Employer

Address:
Representative:
Email:
Telephone number:

11. GENERAL

- 11.1. A certificate signed by any manager of the Bank, whose appointment need not be proved, as to any amounts outstanding under any of the Loans shall be prima facie proof of the facts stated therein for all purposes. It is recorded that the obligations of the Employer shall be limited to the amounts set out in a valid Authority to Deduct in the loan agreement.
- 11.2. This Agreement constitutes the entire Agreement between the parties relating to the subject matter hereof and no variation amendment or cancellation of this Agreement shall be binding unless reduced to writing and signed by all the parties.
- 11.3. Should any provision in this Agreement be found to be invalid it shall be severed from the Agreement and shall not affect the validity of the remaining provisions.
- 11.4. The *contra preferentium* rule shall not apply in the interpretation of this Agreement.
- 11.5. Notwithstanding anything to the contrary, all parties hereto will comply with all applicable legislation from time to time and in particular (but not limited hereto) the NCA and the Consumer Protection Act No 68 of 2008.
- 11.6. The Employer will not be liable for any claim, by the Fund, the Members or any other third party arising directly or indirectly, whether arising in contract or delict or howsoever arising, from the advertising, marketing and promotion of, and the provision of the Smart Housing Loans (including the carrying out of the associated obligations of the Employer as set out in this Agreement) and

the Bank indemnifies the Employer accordingly, provided that the advertising, marketing and provision of the Smart Housing Loans was expressly authorised by the Bank.

11.7. The Employer is indemnified and will be held harmless against all/any claim/s that may arise from the Fund, the Members or any third party pursuant to the incorrect details in respect of the Employer's obligations having been furnished to the Employer.

12. EXECUTION

This Agreement is executed for and on behalf of

Signed at: -	_____
Date: -	_____
For and on behalf of The Employer	
Signature	_____
Full Name	_____
Position	_____
Date of Birth	_____
By signing above, I warrant that I have been duly authorised to sign this Agreement	
Witness Signature	_____
Full Name	_____
Date of Birth	_____

Signed at: -	_____
Date: -	_____
For and on behalf of The Bank	_____
Signature	_____
Full Name	_____
Position	_____
Date of Birth	_____
By signing above, I warrant that I have been duly authorised to sign this Agreement	
Witness Signature	_____
Full Name	_____
Date of Birth	_____

Signed at: -	_____
Date: -	_____
For and on behalf of The Bank	_____
Signature	_____
Full Name	_____
Position	_____
Date of Birth	_____
By signing above, I warrant that I have been duly authorised to sign this Agreement	
Witness Signature	_____
Full Name	_____
Date of Birth	_____
