

PC 114/11

AGREEMENT FOR SALE OF PART OF A BUSINESS

**COPY**

THIS AGREEMENT is made the 12<sup>th</sup> day of April, 1999

**BETWEEN** THE MINISTER OF FINANCE AND PLANNING of 30 National Heroes Circle, Kingston 4 in the Parish of Saint Andrew (hereinafter called "the Minister") of the FIRST PART

**AND** WORKERS SAVINGS AND LOAN BANK, a body corporate formed under the laws of Jamaica and having its registered office at 12 Trafalgar Road, Kingston 5 in the Parish of Saint Andrew (hereinafter called "Workers") of the SECOND PART

**AND** CITIZENS BANK LIMITED, a company incorporated under the laws of Jamaica and having its registered office at 17 Dominica Drive, Kingston 5 in the Parish of Saint Andrew (hereinafter called "the Purchaser") of the THIRD PART

**AND** FINSAC LIMITED, a company incorporated under the laws of Jamaica and having its registered office at 76 Knutsford Boulevard, Kingston 5 in the Parish of Saint Andrew (hereinafter called "Finsac") of the FOURTH PART

**WHEREAS:**

(1) Finsac was established by the Government of Jamaica to provide financial assistance to the financial sector and in pursuance thereof, Finsac or the Minister of Finance has acquired control of the following financial entities:

Citizens Bank Limited ("Citizens")  
Eagle Commercial Bank Limited ("Eagle")  
Island Victoria Bank Limited ("IVB")  
Workers Savings & Loan Bank ("Workers")  
Citizens Merchant Bank Limited ("CMB")  
Island Life Merchant Bank Limited ("ILMB")  
Corporate Merchant Bank Limited ("Corporate")

(2) Effective 1 October 1998, the Minister appointed the Managing Director of Finsac, Mr. Patrick Hylton, as his agent in charge of Workers,

(3) Finsac intends to rationalize the activities and operations of these financial entities by transferring certain assets and liabilities of Eagle, IVB, Workers, CMB, ILMB and Corporate to Citizens and Citizens has agreed to take the aforesaid assets and assume the liabilities pursuant to a Scheme for Transfer of Business and upon the terms and conditions set out herein.

NOW THEREFORE IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

In this Agreement including the recitals and the Schedules:

- (a) **"Assets"** means the property, assets and rights of the Business to be purchased by the Purchaser;
- (b) **"Book Debts"** means the trade debts owed to Workers at the Effective Date in connection with the Business;
- (c) **"Business"** means the business of banking carried on by Workers at the Effective Date;
- (d) **"Contracts"** means the current contracts and engagements of Workers in relation to the Business but excluding contracts with employees;
- (e) **"Creditors"** means the aggregate amount owed by Workers in connection with the Business to or in respect of trade creditors and accrued charges as recorded in the books of account of the Business at the Effective Date;
- (f) **"Deed of Indemnity"** means a deed of indemnity to be given by Finsac in the form set out in the Fourth Schedule hereto;
- (g) **"Effective Date"** means the 21<sup>ST</sup> day of April, 1999;
- (h) **"Excluded Assets"** means the assets listed in the First Schedule hereto which are owned by Workers but are excluded from the sale to the Purchaser;
- (i) **"Excluded Liabilities"** means the liabilities of Workers listed in the Second Schedule hereto which are not being assumed by the Purchaser;
- (j) **"Finsac Bond"** means a negotiable promissory note issued by Finsac Limited and guaranteed by the Government of Jamaica substantially in the form set out in the Third Schedule hereto;
- (k) **"Fixed Assets"** means all plant, machinery, tools, equipment, vehicles and other chattels owned by Workers on the Effective Date for the purpose of the Business or otherwise;
- (l) **"Minister"** means the Minister of Finance and Planning;
- (m) **"Scheme"** means the Scheme for Transfer of Business involving the transfer of the undertaking, business and assets of Eagle, IVB, Workers, CMB, ILMB and Corporate to Citizens;

- (n) 'Vesting Orders' means Vesting Orders issued by the Minister under section 35 of the Banking Act vesting the assets of Eagle, IVB and Workers in Citizens and under section 35 of the Financial Institutions Act vesting the assets of CMB, Corporate and ILMB in Citizens.

In this Agreement, clause headings are for ease of reference only and shall not affect the interpretation of the Agreement.

## 2. SALE AND PURCHASE OF BUSINESS

Subject to the terms and conditions of this Agreement and in exercise of the powers conferred on the Minister by sub-section 1 of section 25D of the Banking Act, the Minister shall sell to the Purchaser and the Purchaser shall purchase as of the Effective Date:

- (a) the Business as a going concern; and
- (b) all the assets and rights owned by, or under the control of, Workers and used in the conduct of the Business including, but without limitation:
- the Goodwill of Workers in relation to the Business, together with the exclusive right for the Purchaser or its assignee to represent itself as carrying on the Business in succession to Workers and all trade names associated with the Business;
  - the freehold and leasehold properties owned by Workers;
  - the Fixed Assets;
  - the Book Debts;
  - the benefit of the Contracts;
  - any refund due to Workers from its pension fund;
  - any intellectual property rights; and
  - any cash balances
- BUT EXCLUDING the Excluded Assets.

## 3. PURCHASE CONSIDERATION

- 3.1 Finsac shall issue Finsac Bonds to the Purchaser in such aggregate principal amount as shall ensure that the total value of Assets received by the Purchaser from Workers is equivalent to the total liabilities assumed pursuant to sub-clause 3.2 below.
- 3.2 The consideration for the sale of the Business and the assets referred to in clause 2 above and the Finsac Bonds referred to in sub-clause 3.1 above shall be the assumption by the Purchaser of all the liabilities and obligations of Workers (including contingent liabilities) existing at the Effective Date BUT EXCLUDING the Excluded Liabilities.
- 3.3 For the purposes of this clause, the value of the Assets shall be the lesser of the book or market value as at the Effective Date as certified by the statement of assets and liabilities prepared pursuant to clause 6 hereof.

#### 4. COMPLETION

- 4.1 The sale and purchase shall be completed on the Effective Date or when all the matters set out in this clause 4 are effected.
- 4.2 Workers shall deliver to the Purchaser or as it may direct such of its assets as are capable of being transferred by delivery.
- 4.3 Workers shall cause to be delivered to the Purchaser such documents as are required by the Purchaser to complete the sale and purchase of the Assets and vest title to the Assets in the Purchaser, including (but without limitation) assignments of the Goodwill, Contracts, intellectual property rights and leases and all books of account, corporate records, information relating to customers and suppliers and all other documents and records relating to the Business.
- 4.4 If any or all of the transactions set out in sub-clause 4.2 or 4.3 do not take place as provided, the Purchaser shall be entitled to rescind this Agreement without prejudice to any other remedy it may have.

#### 5. TRADING IN THE NAME OF WORKERS

The Purchaser shall be entitled to carry on banking business in the name of Workers at the business locations previously operated by Workers commencing from the Effective Date and ending on 1 October 1999 and any liability arising therefrom shall be the sole responsibility of the Purchaser.

#### 6. STATEMENT OF ASSETS AND LIABILITIES

Prior to completion, Workers shall prepare and deliver to the Purchaser a statement of the assets and liabilities being transferred to the Purchaser hereunder as at the Effective Date. Such statement shall be duly certified by the Directors of Workers.

#### 7. DEBTORS

On completion, Workers shall supply to the Purchaser full details of the Book Debts.

#### 8. CREDITORS AND LIABILITIES

- 8.1 On completion, Workers shall supply to the Purchaser full details of the Creditors.
- 8.2 The Purchaser shall assume full responsibility for the discharge of Creditors and all debts payable by and claims outstanding against Workers at the Effective Date, including all taxes, rent and other expenses which are to be assumed by the Purchaser hereunder.

#### 9. CONTRACTS

The Purchaser shall perform and discharge the outstanding obligations and liabilities of

10. EMPLOYEES

- 10.1 Workers shall terminate all contracts of employment with its employees prior to the Effective Date and the Purchaser shall at its option offer to re-engage such of Workers' employees as it sees fit under a new contract of employment with the Purchaser on the same terms and conditions as the previous contracts of employment to take effect immediately on the ending of the said employees' previous contracts with Workers.
- 10.2 Finsac shall indemnify the Purchaser against any order to pay compensation to the employees of Workers provided that the order is not made as the result of any act or omission of the Purchaser.
- 10.3 All salaries and other emoluments, including holiday pay, tax and other statutory payments including termination payments (if any) relating to the employees of Workers shall be borne by Workers up to the Effective Date and all necessary apportionments shall be made.

11. INSURANCE

Workers undertakes to the Purchaser that it will notify the interest of the Purchaser to the relevant insurers and keep in force its existing policies in respect of the Assets until the Effective Date.

12. VESTING OF ASSETS

- 12.1 Workers shall take all necessary steps and co-operate fully with the Purchaser to ensure that it obtains the full benefit of the Business and the Assets and shall execute such documents and take such steps (or procure other necessary parties so to do) as are necessary or appropriate for the vesting in the Purchaser all its rights and interest in the Assets.
- 12.2 Workers shall apply to the Minister to make Vesting Orders, pursuant to section 35 of the Banking Act, vesting in the Purchaser all the Assets BUT EXCLUDING the Excluded Assets.
- 12.3 Until legal title to any asset hereby agreed to be transferred (including any asset presently held by any other persons in trust for Workers) is vested in the Purchaser, the legal owner shall hold such asset in trust for the benefit of the Purchaser.
- 12.4 Insofar as the Assets comprise the benefits of contracts that cannot effectively be assigned to the Purchaser without the consent of a third party or except by an agreement of novation, Workers and the Purchaser shall use all reasonable efforts to obtain consent or procure a novation.
- 12.5 Unless and until consent is obtained or the contracts are novated, the Purchaser shall, for its own benefit, at its own expense and to the extent that the contracts

permit, perform on behalf of Workers all the obligations of Workers which fall to be performed after the Effective Date.

13. APPORTIONMENT OF OUTGOINGS

All rents, rates, gas, water, electricity and telephone charges and other outgoings relating to or payable in respect of the Business up to the Effective Date shall be borne by Workers and as from the Effective Date shall be borne by the Purchaser and all rents, royalties and other periodical payments receivable in respect of the Business up to that time shall belong to and be payable to Workers and as from that time belong to and be payable to the Purchaser.

14. CHANGE OF NAME

With the approval of the Minister, the Purchaser shall at its Annual General Meeting scheduled to be held on 26 May 1999 (or such later date as may be agreed by the Board of Directors) consider and if thought fit resolve to change the company's name to Union Bank of Jamaica Limited.

15. SURRENDER OF LICENCE

Workers shall, within six (6) months of the Effective Date, surrender its licence under the Banking Act to the Minister for cancellation.

16. CAPITALIZATION OF THE PURCHASER

The Purchaser, with the consent of its shareholders, shall increase its share capital and Finsac shall subscribe for such number of ordinary shares as shall be required to fully capitalize the Purchaser to the intent that its issued share capital shall meet the capitalization standards set by the Bank of Jamaica.

17. WARRANTIES BY WORKERS/THE MINISTER/FINSAC

17.1 Workers represents and warrants to the Purchaser that:

17.1.1

it has and will have full power and authority to enter into and perform this Agreement which constitutes, or when executed will constitute, binding obligations on it in accordance with its terms;

17.1.2

there is, and at the Effective Date there will be, no pledge, lien or other encumbrance on or over or affecting any of the Assets except as have been already disclosed to the Purchaser in writing;

17.1.3

it is entitled to transfer the full legal and beneficial ownership of the Assets to the Purchaser on the terms of this Agreement and all requisite consents to enable it to do so have been or will be duly obtained from the appropriate authorities;

17.2 The Minister and Finsac each represents and warrants to the Purchaser that it has and will have full power and authority to enter into and perform this Agreement and the Deed of Indemnity which constitutes, or when executed will

- 17.3 The Minister, Finsac and Workers each acknowledge and accept that the Purchaser has entered into this Agreement on the following assumptions:
- 17.3.1 that the statement of assets and liabilities to be provided to the Purchaser pursuant to clause 6 hereof gives a true and fair view of the assets and liabilities of Workers as at the Effective Date, fully discloses all assets and has taken into account all known liabilities and obligations of Workers;
- 17.3.2 that Workers is not exposed to any liability for any tax arising out of its operations prior to the Effective Date that has not been disclosed to the Purchaser in writing or provision made for as a contingent liability;
- 17.3.3 that Workers has duly filed all tax returns required to be filed by law and all such returns have been prepared on a proper basis and are not likely to be reopened or subject to additional assessments;
- 17.3.4 that to the best of its knowledge and belief after due inquiries, there are no:
- (a) pending or threatened lawsuits, arbitrations or claims; or
  - (b) potential or contingent liabilities
- arising prior to the Effective Date that have not been disclosed to the Purchaser in writing;
- 17.3.5 that Workers has good and marketable title to the Assets and except as has been notified to the Purchaser, such Assets are free from any mortgage, charge, pledge, lien or other encumbrance;
- 17.3.6 that except as has been disclosed to the Purchaser in writing, Workers has not issued any guarantee or indemnity or has endorsed any note or other negotiable instrument on which liability might arise against it;
- 17.3.7 that all information provided by Workers to the Purchaser in writing is true and accurate in all material respects.
- 17.4 Each of the warranties and assumptions set out in sub-clauses 17.1, 17.2 and 17.3 is without prejudice to any other warranty or assumption and except where expressly stated otherwise, no clause of this Agreement shall govern or limit the extent or application of any other clause.
- 17.5 If there is a breach of any representation or warranty set out herein or if any assumption proves to be false, then Finsac shall indemnify the Purchaser in accordance with the Deed of Indemnity, PROVIDED THAT:
- (a) in respect of a claim based on a false assumption, such claim must have been notified to Finsac within two (2) years of the date of this Agreement; and
  - (b) the Purchaser had no knowledge of such claim on the date hereof.
- For this purpose, an assumption shall be false if with respect to any matter the factual situation shall differ from the assumption.
- 17.6 The rights and remedies of the Purchaser in respect of any breach of any of the warranties or in respect of any false assumption, shall not be affected by any investigation or due diligence undertaken by or on behalf of the Purchaser into the affairs of Workers or failure to exercise or delay in exercising any right or remedy or by any other matter or thing, except a specific and duly authorized written waiver or release, and no single or partial exercise of any right or remedy

17.7 Where any misrepresentation or breach of warranty or any false assumption is capable of being remedied within a reasonable time, Finsac shall have the right to remedy same in lieu of providing an indemnity, provided that the election to remedy is taken promptly and communicated to the Purchaser and the remedial action is undertaken with due diligence.

#### 18. PENSIONS

Workers and the Purchaser hereby agree to conclude a subsidiary agreement concerning the pension scheme now existing for the benefit of Worker's employees PROVIDED THAT the parties agree that the entitlements of Worker's employees who may be offered new contracts of employment with the Purchaser shall in no way be less than their present entitlements under the existing scheme.

#### 19. STAMP DUTIES AND TRANSFER TAX

- 19.1 All stamp duties and transfer tax (if any) incurred in connection with the transfer of the undertaking and assets of Workers or the Workers pension scheme to the Purchaser or the Purchaser's pension scheme shall be borne in full by Finsac.
- 19.2 Notwithstanding sub-clause 19.1, the parties shall apply to the Minister of Finance and Planning for the remission of the aforesaid stamp duties and transfer taxes (if any).

#### 20. MISCELLANEOUS

- 20.1 This Agreement shall be binding upon and shall enure for the benefit of each party's successors and assigns
- 20.2 No announcement shall be made in respect of the subject matter of this Agreement except as specifically agreed between the parties or as required by the Jamaica Stock Exchange or the regulatory authorities.
- 20.3 All costs incurred in the negotiation, preparation and execution of this Agreement shall be borne solely by the party that incurred them.
- 20.4 Any notice required to be given under this Agreement shall be in writing and shall be sufficiently and duly given and received if addressed and sent by prepaid registered post or delivered to the recipient at its address hereinbefore stated or to such other address as may from time to time be notified by any party to the others for the purpose. Any such notice sent by prepaid registered post as aforesaid shall be deemed to have been served on the seventh day following the day of its posting.
- 20.5 This Agreement shall be governed by, and construed in accordance with, the Laws of Jamaica.
- 20.6 If any term or provision of this Agreement shall in whole or in part be held to any



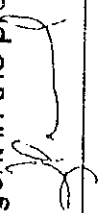
term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

20.7 This Agreement shall constitute the entire Agreement between the contracting parties and no variance or modification thereof shall be valid and enforceable, except by supplemental agreement in writing, executed in the same manner as this Agreement.

IN WITNESS whereof this Agreement was duly executed by the parties on the day and year first hereinbefore written.

SIGNED for and on behalf of THE MINISTER OF FINANCE AND PLANNING by PATRICK HYLTON, duly appointed agent in the presence of:




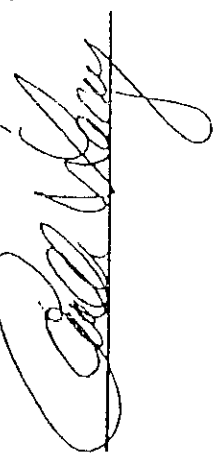
  
WITNESS

Signed for and on behalf of WORKERS SAVINGS AND LOAN BANK by PATRICK HYLTON, duly appointed agent of the Minister of Finance and Planning pursuant to powers granted to the Minister under section 25D of the Banking Act in the presence of:





  
WITNESS


Executed under the Common Seal of CITIZENS BANK LIMITED by WILBUR D. KENNEDY Director and CHARLIE FACEY Secretary in the presence of:

Robert Mathew  
WITNESS

Executed under the Common Seal of FINSAC LIMITED by PATRICK HYLTON Director and CELIA BISHOP Secretary in the presence of:

  
WITNESS

## First Schedule Excluded Assets

ASSETS	US\$	J\$
<u>Investments</u>		
Real Resort	250,000	9,375,000
Port Royal Development	5,332	199,950
Kingston Pictures	44,748	1,678,050
Bladex	141,610	5,310,375
Formidable (200 shares)		0
Ja Production Fund		<u>15,585,097</u>
		32,148,472
<u>Susidiaries</u>		
Corporate Merchant Bank		60,000,000
Workers Finance Co.		4,000,000
Workers & Capital Finance		<u>6,000</u>
		64,006,000
<u>Loans</u>		
Loans (APPENDIX 1)		7,015,347,596
Interest		489,386,000
Provision		<u>(6,109,208,759)</u>
		1,395,524,837
<u>Fixed Assets</u>		
Lot 16 Twickenham Park		132,168,750
Clock Tower Plaza		105,337,500
2A & 2B New Court Trelawney		159,000,000
Apartment - Orange Bay		<u>1,000,000</u>
		397,506,250
<u>Other Assets</u>		
Guarantees, LC's & Bankers Acceptances (Appendix 2)		115,056,000
<b>TOTAL ASSETS</b>		<u><u>2,004,241,559</u></u>

**SECOND SCHEDULE**  
**EXCLUDED LIABILITIES**

1. All claims, direct or contingent, however arising, which have not been notified to Workers in writing, as at the effective Date.
2. All liabilities arising under or by virtue of any employment contracts or contracts of service entered into by Workers.
3. All litigation against Workers arising as a result of or in connection with credit facilities sold to Finsac Limited or its nominee or those credit facilities which were not transferred by Workers to Citizens.