

## SHARE SALE AGREEMENT

FC 96/11

THIS AGREEMENT is made as of 29 June, 1998

**BETWEEN:** **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");

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

### WHEREAS:

- (1) Finsac is established by the Government of Jamaica to provide financial assistance to the financial sector and, in pursuance thereof, on 5 March, 1998 Finsac entered into a Heads of Agreement with certain shareholders (therein named) of Horizon Group Limited to acquire their shares in Horizon Group Limited.
- (2) In pursuance of the Heads of Agreement, Finsac has acquired control of Horizon Group Limited.
- (3) Among the wholly-owned subsidiaries of Horizon Group Limited are the following financial entities, namely:
  - (i) Horizon Merchant Bank Limited ("HMB");
  - (ii) Horizon Building Society ("HBS"); and
  - (iii) Horizon Securities Limited ("HSL").
- (4) On or about 5 March, 1998, Citizens Bank, at the request of Finsac, assumed the management and control of the Horizon Financial Entities (hereinafter defined) and, in connection therewith, at the request of the Horizon Financial Entities and with the concurrence of Finsac, made advances to the Horizon Financial Entities to enable the Horizon Financial Entities to repay deposits and other liabilities to their respective customers.
- (5) Finsac now wishes to transfer all of the shares in the Horizon Financial Entities to Citizens Bank and Citizens Bank has agreed to take the aforesaid shares upon the terms and conditions set out herein.

NOW THEREFORE IT IS HEREBY AGREED as follows:



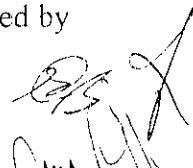
1. **Definitions and Interpretations**

1.1 In this Agreement, including the recitals:

- (a) **"Assignment"** means an assignment to be made on or after the date hereof pursuant to which the Horizon Financial Entities (as assignors) shall as of 30 June, 1998 assign, by way of an absolute sale to Refin Trust Limited ("Refin Trust"), all their respective rights, title and interest in and to certain credit receivables (therein specified) together with all Collections in respect of such credit receivables collected since 6 March, 1998 in consideration for an issue of Finsac Bonds;
- (b) **"Audited Completion Accounts"** means consolidated financial statements of the Horizon Financial Entities as at the Completion Accounts Date prepared by Citizens Bank and the Auditors and certified by the said Auditors as a special purpose audit in accordance with sub-clause 3.3 hereof. Finsac and Citizens Bank agree that the auditors will not carry out a review of the collectability of the loan portfolio but will limit their audit work in relation to the loan portfolio to the verification of the accuracy of the figures reported in the In-house Completion Accounts.
- (c) **"Auditors"** means Price Waterhouse or if Price Waterhouse shall refuse to act, such other auditing firm as may be mutually appointed by the parties;
- (d) **"Balancing Sum"** means the amount (as certified by the Auditors) by which the consolidated liabilities of the Horizon Financial Entities shall exceed their consolidated assets as at the Completion Accounts Date after adding back the consolidated loan loss provision of J\$234,438,037;
- (e) **"Business Day"** means any day other than a Saturday, Sunday or public holiday on which commercial banks are generally open for business in Jamaica;
- (f) **"Collections"** means all principal, interest and other sums collected on account of loans and inter company balances and investments assigned to Refin Trust;
- (g) **"Completion"** means completion of the sale and purchase of the HFES' Shares (as defined below) in accordance with clause 6 hereof;
- (h) **"Completion Accounts Date"** means 5 March, 1998;
- (i) **"Completion Date"** means 29 June, 1998 or such other date on which Completion is effected;



- (j) “**Deed of Indemnity**” means a deed of indemnity in the form set out in Schedule 1 hereto;
- (k) “**Finsac Bond**” means a negotiable promissory note issued by Finsac and guaranteed by the Government of Jamaica substantially in the form set out in Schedule 2 hereto;
- (l) “**HFEs’ Shares**” means all the issued shares in the capital of each of the Horizon Financial Entities;
- (m) “**Horizon Financial Entities**” means HMB, HBS and HSL;
- (n) “**Horizon Group Pension Scheme**” means a pension scheme established by Horizon Group Limited for the benefit of employees of Horizon Group Limited and other companies and entities controlled by Horizon Group Limited;
- (o) “**Horizon Non-financial Entities**” means Horizon Venture Capital Limited, Horizon Insurance Brokers Limited, Horizon Consulting Services Limited, Horizon Trade Services Limited, Horizon Development Company Limited, Dolphin Distributors Limited, Rent-A-Car (1994) Limited, Sun Investment and Finance Limited and Kemicals Worldwide Limited and its subsidiaries;
- (p) “**In-house Completion Accounts**” means consolidated unaudited financial statements of the Horizon Financial Entities as at the Completion Accounts Date prepared by Citizens Bank;
- (q) “**JS**” means the lawful currency of Jamaica;
- (r) “**Net Interest Margin**” means the sum produced by subtracting total interest expenses from total interest income and dividing the result thereof by average earning assets;
- (s) “**Refin Committee**” has the meaning ascribed thereto in a Master Agreement for Sale and Purchase of Credit Receivables dated the 18th day of June, 1998 and made between the Citizens Bank as seller and Refin Trust, a subsidiary of Finsac, as purchaser;
- (t) “**Spot Market Weighted Average Selling Rate**” means the spot market weighted average selling rate of the United States dollar as published by the Bank of Jamaica from time to time but if Bank of Jamaica shall cease to publish such rate, then same shall be as certified by the Bank of Jamaica;
- (u) “**SSAPs**” means the Statements of Standard Accounting Practice adopted by the Institute of Chartered Accountants of Jamaica;



- (v) "Taxes" includes any tax (including income tax, General Consumption Tax, transfer tax and education tax), duty, levy, charge, impost, fee, deduction or withholding of any nature now or hereafter imposed, levied, collected, withheld, assessed or asserted by the Government of Jamaica or any taxation authority thereof; and
- (w) "US\$" means the lawful currency of the United States of America.

1.2 In this Agreement, the singular includes the plural and *vice versa* and reference to one gender includes all genders. Clause headings shall not affect the interpretation hereof.

## 2. Sale and Purchase of HFEs' Shares

Subject to the terms and conditions of this Agreement, Finsac hereby sells as beneficial owner, and Citizens Bank purchases all the HFEs' Shares free from all liens, charges, encumbrances and with all rights attaching to them with effect from 29 June, 1998. The purchase price for the HFEs' Shares shall be J\$300.00, which shall be paid on receipt of the duly executed and stamped share transfers.

## 3. Completion Accounts

3.1 Prior to the Completion Date, Citizens Bank shall prepare and deliver to Finsac the In-house Completion Accounts. The In-house Completion Accounts shall be prepared on the basis of the same accounting principles upon which the last audited accounts of each Horizon Financial Entity were prepared, except where any such accounting principles were at variance with any SSAP, in which case the SSAP shall prevail except as stipulated in (a)(i) below. The In-house Completion Accounts shall include, *inter alia*:

- (a) appropriate provisions for:
  - (i) bad or doubtful receivables, including inter-company balances owing to each of the Horizon Financial Entities by Horizon Life Limited but excluding credit receivables sold to Refin Trust in accordance with the provisions of sub-clause 4.1 hereof or credit receivables which may be offered for sale to Finsac or Refin Trust in accordance with the provisions of sub-clause 8.1 hereof, PROVIDED that in respect of each Horizon Financial Entity no adjustments shall be made to the loan loss provisions existing on its last audited balance sheet prepared as at 30 September, 1997 ;
  - (ii) potential liability for pending or threatened lawsuits or contingent claims arising prior to the Completion Accounts Date;
  - (iii) redundancy and termination payments to the employees of each Horizon Financial Entity who will be dismissed by reason of

redundancy other than employees taken over by Citizens Bank or any of its subsidiaries, PROVIDED that the aggregate amount in respect thereof shall not exceed J\$15,150,000.00;

- (iv) reasonable legal and other expenses likely to be incurred in the liquidation of each Horizon Financial Entity ; and
  - (v) appropriate adjustments to the book value of assets;
- (b) details of the foreign currency position (including foreign currency assets and liabilities) of each Horizon Financial Entity.

3.2 At the time of delivering the In-house Completion Accounts to Finsac, Citizens Bank shall also deliver a certificate signed by its Chief Financial Officer certifying that the In-house Completion Accounts have been prepared in accordance with the principles set out in sub-clause 3.1 above.

3.3 As soon as reasonably practicable after Completion, Citizens Bank shall cause the Auditors to review the In-house Completion Accounts and to consult with Citizens Bank, in making such adjustments (if any) as the Auditors may deem appropriate in order to produce the Audited Completion Accounts.

3.4 The provisions set out in sub-clause 3.1 above with respect to the preparation of the In-house Completion Accounts shall apply *mutatis mutandis* to the Audited Completion Accounts.

3.5 Upon finalisation of the Audited Completion Accounts, Citizens Bank shall cause the Auditors to issue a certificate as to the Balancing Sum. The certificate of the Auditors shall, in the absence of manifest error, be conclusive and final and binding for all purposes.

3.6 Prior to the Completion Date, Finsac shall, in respect of each Horizon Financial Entity, subscribe an amount equivalent to the portion of the audited Balancing Sum attributable to each Horizon Financial Entity for an issue of zero coupon redeemable preference shares of J\$1.00 each in the capital of such Horizon Financial Entity; such subscription shall be effected at par and shall be made by an issue of Finsac Bonds having an aggregate face value equivalent to the audited Balancing Sum and accruing interest as of 6 March, 1998. For the avoidance of doubt, it is hereby declared that the aforesaid zero coupon preference shares shall be among the shares to be transferred under this Agreement to Citizens Bank on Completion.

#### 4. Sale and Purchase of Credit Facilities, etc.

4.1 Finsac hereby agrees that with effect from 30 June 1998, it shall cause its wholly-owned subsidiary, Refin Trust, to purchase, pursuant to the Assignment, from the Horizon Financial Entities:

- (a) a portfolio of investments, non-performing and under performing loans in the aggregate principal and accrued interest amount of J\$2,867,030,189 this

amount including the J\$ equivalent (calculated at the 5 March, 1998 exchange rate of J\$36.2172:US\$1.00) of US\$32,216,812; and

- (b) balances owing by Horizon Non-financial Entities to any one or more of the Horizon Financial Entities in the aggregate principal and interest amount of J\$730,968,078 this amount including the J\$ equivalent (calculated at the 5 March, 1998 exchange rate of J\$36.2172:US\$1.00) of US\$1,558,209.
- (c) equity investments held by Horizon Financial Entities in Horizon Venture Capital Limited in the aggregate sum of J\$24,478,713.

in all three cases, based on outstanding balances as at 5 March, 1998.

4.2 In consideration for the purchase of the aforesaid loans, inter-company balances and investments, Finsac shall issue on behalf of Refin Trust, Finsac Bonds in the aggregate principal amount of J\$3,622,476,980 accruing interest as of 6 March, 1998. The parties acknowledge that the aforesaid sum of J\$3,622,476,980 represents the aggregate principal and accrued interest balance of the loans, inter-company balances and investments, sold to Refin Trust.

4.3 Citizens Bank shall prepare a list as at 5 March, 1998 of the non-performing and under performing loans and inter-company balances and investments sold to Refin Trust. In addition to showing the balances as at 5 March, 1998, the list shall also show the outstanding balance due in respect of each such loan, investment or inter-company balance as at 30 June, 1998 and shall be in such a form as to facilitate easy comparison of the 30 June, 1998 outstanding balances with the outstanding balances as at 5 March, 1998. The following arithmetical exercise shall then be undertaken to determine the final adjustment sum due from Finsac to Citizens Bank as at 30 June, 1998, namely:

- (a) the aggregate principal and interest sum set out in sub-clause 4.2 of J\$3,622,476,980 shall be taken as the base sum;
- (b) there shall then be added to the base sum the following, namely:
  - (i) further advances made to any of the debtors on the aforesaid list between 5 March, 1998 and 30 June, 1998 based on commitments in existence as at 5 March, 1998 or such further advances as may have been approved by Finsac;
  - (ii) accrued but unpaid interest on the aforesaid loans, and inter-company balances from 6 March, 1998 to 30 June, 1998;
- (c) there shall then be subtracted from the aggregate of (a) and (b) above all principal and interest payments received on account of the aforesaid loans and inter-company balances between the period 6 March, 1998 and 30 June, 1998.

The product of the foregoing arithmetical exercise is herein called "the 30 June Balance" and has been determined to be J\$3,686,372,228. There shall then be deducted from the above stated 30 June Balance the sum of J\$3,622,476,980 referred to in sub-clause 4.2. This results in a positive balance of J\$63,895,248 for which Finsac shall forthwith issue to Citizens Bank a Finsac Bond in such amount. Such Finsac Bond shall accrue interest as of 30 June, 1998. Finsac may, at its option, satisfy its obligation to provide Finsac Bonds accruing interest as of 30 June, 1998 by instead issuing to Citizens Bank, Finsac Bonds bearing interest as of 6 March, 1998 for a discounted principal amount, to the intent that Citizens Bank will receive the equivalent of J\$63,895,248 with interest thereon from 30 June, 1998.

4.4 The parties acknowledge that as at 5 March, 1998 the Horizon Financial Entities had a short foreign currency position which created a foreign exchange exposure. The parties further acknowledge that the sale by the Horizon Financial Entities of credit facilities denominated in US\$ (herein called "US\$ Credit Facilities") pursuant to sub-clause 4.1 above and any sale by Citizens Bank of US\$ Credit Facilities under sub-clause 8.1 hereof will create further foreign exchange exposure. Citizens Bank intends to cover the aforesaid foreign exchange exposures by the sale of Finsac Bonds and the purchase of assets of comparable nominal value denominated in US\$. Finsac hereby agrees to indemnify Citizens Bank in respect of loss occurring as a result of any devaluation of the J\$ as against the US\$ occurring between 5 March, 1998 and the termination of the Devaluation Risk Period. For the purposes hereof:

- (a) the Devaluation Risk Period shall commence on 6 March, 1998 and shall terminate ninety (90) Business Days after the date of receipt of the Finsac Bonds referred to under sub-clauses 4.2 and 4.3 above; and
- (b) a devaluation of the J\$ shall be deemed to occur if the Benchmark Rate shall exceed by more than two and one half percent (2½%) the spot market weighted average selling rate of the US\$ as at 5 March, 1998. The "Benchmark Rate" shall be the aggregate of the daily spot market weighted average selling rate of the US\$ in respect of the ninety (90) Business Days referred to in sub-paragraph (a) above divided by ninety (90).
- (c) the foreign exchange exposure in relation to which Finsac will be obliged to indemnify Citizens Bank against loss resulting from devaluation shall be the foreign currency short position (if any)
  - (i) specified in the Audited Completion Accounts and
  - (ii) resulting from the sale of any US\$ denominated assets to Refin Trust Limited pursuant to sub-clauses 4.1 or 8.1 hereof.

4.5 The payment and indemnification referred to in sub-clause 4.4 shall be satisfied by the issue of Finsac Bonds accruing interest from the day immediately succeeding the date of termination of the Devaluation Risk Period.

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4.6 If, based on the provisions of clause 4.4 above, the J\$ shall appreciate in value as against the US\$, by more than two and one half percent (2½%) then Finsac shall be entitled to the benefit of such appreciation which shall be determined *mutatis mutandis* in accordance with the provisions of sub-clause 4.4 hereof. Such appreciation shall be determined at the end of the Devaluation Risk Period and Citizens Bank shall surrender to Finsac, Finsac Bonds having a face value equivalent to the amount of such appreciation and accruing interest as of 6 March, 1998.

5. **Substandard Contingent Liabilities**

The parties acknowledge that as at 5 March, 1998 there were contingent liabilities on the books of the Horizon Financial Entities which Citizens Bank has deemed to be substandard. These contingent liabilities total US\$2,000,000 and J\$7,084,724 as at 30 June, 1998. It is hereby agreed that no provision will be made in the In-house Completion Accounts or the Audited Completion Accounts for such contingent liabilities and further that Finsac will indemnify Citizens Bank against any liability, claims or costs it may incur in respect of the aforesaid contingent liabilities.

6. **Completion**

6.1 The obligation of Citizens Bank to complete the purchase of the HFES' Shares shall be conditional upon:

- (a) completion of the matters set out in clauses 3 and 4 above; and
- (b) the warranties, representations and assumptions set out in clauses 10.1 and 10.2 being true and accurate in all material respects as at the Completion Date.

6.2 Completion of the sale and purchase of the HFES' Shares shall take place at the offices of Finsac on 29 June, 1998 or on such later date as the parties may mutually agree.

6.3 On or prior to Completion:

- (a) Finsac shall deliver to Citizens Bank:
  - (i) duly completed and signed transfers of the HFES' Shares stamped in accordance with the Transfer Tax Act and the Stamp Duty Act in favour of Citizens Bank and/or its nominees;
  - (ii) duly completed and signed transfer, in favour of Citizens Bank or its nominee, of any other shares to be transferred to Citizens Bank under this Agreement and not included in sub-paragraph (i) above; such share transfer to be stamped in accordance with the Transfer Tax Act and the Stamp Duty Act;
  - (iii) the share certificates in respect of the HFES' Shares;

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- (iv) the share certificates, if any, in respect of the shares referred to in sub-paragraph (ii) above;
  - (v) the Deed of Indemnity duly executed by Finsac;
  - (vi) the resignation of the directors from their respective offices of each Horizon Financial Entity;
  - (vii) the statutory books of each Horizon Financial Entity complete and up-to-date together with accounting and other records of each Horizon Financial Entity;
  - (viii) the Memoranda and Articles of Association of HMB and HSL and the Rules of HBS together with their respective common seals; and
  - (ix) all other files, documents and things belonging to any of the Horizon Financial Entities.
- (b) Finsac shall procure the following to be done:
- (i) a meeting of the directors of each Horizon Financial Entity shall be held at which: (A) nominees of Citizens Bank shall be appointed directors of each Horizon Financial Entity and such of the resignations referred to in sub-paragraphs (vi) of paragraph (a) of sub-clause 6.2 above as Citizens Bank may designate shall be accepted; and (B) the transfer of the HFES' Shares from Finsac to Citizens Bank and/or its nominee(s) shall be approved;
  - (ii) the register of members of each Horizon Financial Entity shall be written up to reflect the transfer of the relevant HFES' Shares from Finsac to Citizens Bank and definitive share certificates issued to Citizens Bank and/or its nominee(s).

6.4 Transfer tax and stamp duties payable upon transfer of the HFES' Shares shall be borne by Finsac.

## 7. Net Interest Margin

7.1 The parties acknowledge that the Horizon Financial Entities are experiencing a negative net interest margin and that after Completion, that experience will continue. In order to compensate Citizens Bank for the burden arising from such negative net interest margin, Finsac will within seven (7) days after completion, subscribe for a series of zero coupon preference shares in the capital of each of the Horizon Financial Entities. The principal amount of such capital subscription shall be such as will ensure that each of the Horizon Financial Entities shall achieve:

- (a) a minimum capital to assets ratio of 10% of the total assets of each of the Horizon Financial Entities, calculated on its balance sheet in the Audited Completion Accounts;
- (b) a positive net interest margin based on its balance sheet in the Audited Completion Accounts.

7.2 The parties hereby agree that the total capital subscription for all the Horizon Financial Entities referred to in sub-clause 7.1 above shall be J\$1,400,000,000 and shall be paid for with Finsac Bonds bearing interest as of 6 March, 1998. To the extent that any of the Horizon Financial Entities has a positive capital position after adding back the loan loss provision contained in its last audited financial statements, the capital subscription of \$1,400,000,000 shall be adjusted by the amount of positive capital in such Horizon Financial Entity.

8. **Additional Sale and Purchase of Credit Facilities, etc.**

8.1 At any time up to January 31, 1999, Citizens Bank and any of the Horizon Financial Entities may offer for sale to Finsac or to a company designated by Finsac, credit facilities which are non-performing or under-performing and in respect of which, in the opinion of the Refin Committee, Citizens Bank has exercised due care in the management thereof.

8.2 In respect of any offer referred to in sub-clause 8.1 above, Finsac shall be obliged to purchase or cause the designated company to purchase from Citizens Bank or the relevant Horizon Financial Entities the credit facilities comprised in the offer in each case at a purchase price equivalent to the aggregate of the nominal value of the outstanding principal and accrued interest up to ninety (90) days as at the date of such sale PROVIDED that if any provision has been made for loss in respect of any such credit facility and/or receivable in the Audited Completion Accounts then, the purchase price of such credit facility and/or receivable shall be the aggregate nominal value of the outstanding principal and accrued interest less such provisions.

8.3 References in sub-clause 8.1 to credit facilities being "*on the books of any Horizon Financial Entity as of the Completion Date*" shall include credit facilities in respect of which commitments or undertakings were issued as at the Completion Date though the whole or any part of the relevant funds may not have been disbursed and, an "*under-performing*" credit facility shall be deemed to be one on which interest is accruing below the market rate and for this purpose, the market rate shall be as follows:

- (a) 35% per annum in respect of commercial loans and credit facilities denominated in J\$;
- (b) 25% per annum in respect of residential mortgage loans denominated in J\$; and
- (c) 13½% per annum in respect of commercial loans, credit facilities and residential mortgages denominated in US\$.

9. **Finsac Bonds**

The parties understand and expect that all Finsac Bonds issued in pursuance of this Agreement in consideration for shares in HMB and HBS shall be designated by the Minister as liquid assets within the meaning of section 15 of the Banking Act.

10. **Warranties, Representations and Undertakings**

10.1 Finsac represents and warrants to Citizens Bank that:

- (a) it has and will have full power and authority to enter into and to perform this Agreement and the Deed of Indemnity which constitutes, or when executed, will constitute, binding obligations on it in accordance with their respective terms;
- (b) the HFES' Shares constitute the whole of the issued and allotted share capital of the Horizon Financial Entities;
- (c) there is, and at Completion will be, no pledge, lien or other encumbrance on or over or affecting any of the HFES' Shares and there is, and at Completion will be, no such encumbrance and no claim has been or will be made by any person to be entitled to any of the foregoing; and
- (d) it is entitled to transfer the full legal and beneficial ownership of the HFES' Shares to Citizens Bank on the terms of this Agreement and all requisite consents to enable it to do so have been duly obtained from the appropriate authorities.

10.2 Finsac acknowledges and accepts that Citizens Bank has entered into this Agreement on the following assumptions, namely:

- (a) that except as specified herein with regard to the loan portfolio which was not subject to the review of the Auditors, the Audited Completion Accounts:
  - (i) give a true and fair view of the assets and liabilities of the Horizon Financial Entities as at the Completion Accounts Date and their consolidated loss as at such date;
  - (ii) fully disclose all assets of the Horizon Financial Entities;
  - (iii) have taken account of all known liabilities and obligations of the Horizon Financial Entities;
  - (iv) subject to clause 5 above make full provision or reserve for all liabilities and outstanding commitments as at the Completion

Accounts Date, including contingent, quantified or disputed liabilities:

- (b) that except to the extent that provision for Taxes has been made in the Audited Completion Accounts, none of the Horizon Financial Entities is exposed to any liability for any Tax arising out of its operations prior to the Completion Accounts Date and the provisions (if any) made for such Taxes in the Audited Completion Accounts are adequate;
- (c) that each Horizon Financial Entity has prior to the Completion Accounts Date duly filed all Tax returns required to be filed according to law and all such returns have been prepared on a proper basis and are not likely to be reopened or subject to additional assessments;
- (d) that to the best of its knowledge and belief after due enquiries, there are no:
  - (i) pending or threatened lawsuits, arbitrations or claims against any of the Horizon Financial Entities; or
  - (ii) potential or contingent liabilities of any of the Horizon Financial Entities,
 arising prior to the Completion Accounts Date for which adequate provision has not been made in the Audited Completion Accounts except for the contingent liabilities referred to in clause 5 hereof;
- (e) none of the Horizon Financial Entities has incurred or has taken any action which would cause it to incur liability for:
  - (i) unfair dismissal or breach of any employment or service contract;
  - (ii) breach of any lease or tenancy agreement;
  - (iii) breach of any contract or engagement,
 for which adequate provision has not been made in the Audited Completion Accounts;
- (f) that each Horizon Financial Entity has good marketable titles to the assets taken into account in the Audited Completion Accounts and, except as stated in any note to the Audited Completion Accounts, such assets are free from any mortgage, charge, pledge, lien or other encumbrance;
- (g) that except as disclosed in the notes to the Audited Completion Accounts, none of the Horizon Financial Entities has issued any guarantee or indemnity or has endorsed any note or other negotiable instrument on which liability may arise against such Horizon Financial Entity; and

- (h) that all information provided by each Horizon Financial Entity to Citizens Bank is true and accurate in all material respects.

10.3 Each of the warranties and assumptions set out in sub-clauses 10.1 and 10.2 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.

10.4 If there is a breach of any representation or warranty set out in sub-clause 10.1 or if any assumption set out in sub-clause 10.2 proves to be false, then Finsac shall indemnify Citizens Bank 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) Citizens Bank 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.

10.5 The rights and remedies of Citizens Bank in respect of any breach of any of the warranties or in respect of any false assumption, shall not be affected by Completion, any investigation or due diligence undertaken by or on behalf of Citizens Bank into the affairs of the Horizon Financial Entities or failure to exercise or delay in exercising any right or remedy or by any other matter or thing, except a specific and duly authorised written waiver or release, and no single or partial exercise of any right or remedy shall preclude any further or other exercise of such right or remedy.

10.6 Where any breach of representation or 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 Citizens Bank and the remedial action is undertaken with due diligence.

## 11. Pensions

11.1 The parties shall cause the trustees of the Horizon Group Pension Scheme to transfer to the trustees of the Citizens Bank Pension Scheme so much of the assets of the Horizon Group Pension Scheme as may be necessary, based on an actuarial assessment, to cover the entitlement under the Horizon Group Pension Scheme of the employees of the Horizon Financial Entities as at the date of Completion ("Transferring Employee"). In assessing such entitlement, the actuary shall be directed to assume that, subject to sub-clause 11.2, the Citizens Bank Pension Scheme will assume the pension obligations to each Transferring Employee and that such pension obligations would be actuarially matched by the transfer of assets from the Horizon Group Pension Scheme so as to put each Transferring Employee in the same position as he would have been had he continued under the Horizon Group Pension Scheme.

11.2 The parties recognise that the benefits under the Horizon Group Pension Scheme are less favourable than the comparative benefits under the Citizens Bank Pension Scheme and that Transferring Employees on joining the Citizens Bank Pension Scheme shall be entitled to the full benefits of that scheme. Accordingly, Citizens Bank shall cause an actuarial assessment to be undertaken to determine the additional amount which is necessary to supplement the assets transferred from the Horizon Group Pension Scheme on account of the Transferring Employees to bring such Transferring Employees' pension benefits on parity with the pension benefits of other employees under the Citizens Bank Pension Scheme; such amount being hereby called "the Parity Sum". Upon completion of the actuarial assessment, Finsac shall pay into the Citizens Bank Pension Scheme the Parity Sum plus reasonable actuarial fees payable in connection with the actuarial assessment. Such payment may be effected by a Finsac Bond for the principal amount of the Parity Sum and the actuarial fees. Such Finsac Bond shall accrue interest as at the date of determination by the actuary of the Parity Sum.

11.3 As a separate and independent obligation from that set out in sub-clause 10.2 above, it is hereby agreed that if the Horizon Group Pension Scheme is under-funded, then such under-funding shall be borne on a proportionate basis (to be determined by the actuary) between Transferring Employees and other contributors to the Horizon Group Pension Scheme. Any shortfall attributed to the Transferring Employees shall be made good by Finsac issuing to Citizens Bank a Finsac Bond for the principal amount of such shortfall.

## 12. Vesting Order and Stamp Duty Remissions

12.1 Finsac recognises that after Completion Citizens Bank intends to cause the assets and liabilities of the Horizon Financial Entities to be vested in Citizens Bank and/or any other financial institution controlled by Citizens Bank, and in that regard, Finsac shall assist Citizens Bank in procuring appropriate vesting orders from the Minister of Finance and Planning under the relevant law.

12.2 Finsac further undertakes to use its best endeavours to secure from the Minister of Finance and Planning remission of stamp duty payable upon any increase of share capital of the Horizon Financial Entities or Citizens Bank to facilitate the share subscriptions contemplated by this Agreement and the vesting of assets and liabilities in Citizens Bank and/or financial institutions controlled by Citizens Bank pursuant to sub-clause 12.1 above. In the event that such stamp duty remission is not obtained, all such duties shall be borne by Finsac.

## 13. Miscellaneous

13.1 Notwithstanding that Citizens Building Society is not a party to this Agreement, it is hereby declared and agreed that, subject to the prior written consent of Finsac, Citizens Bank shall have the right to perform any obligation or to exercise any right granted to it hereunder through Citizens Building Society and the exercise of any such right or the performance of any such obligation shall be accepted by Finsac as performance of the relevant obligations or exercise of the relevant right by Citizens Bank. Finsac undertakes to execute any further document which may be reasonably required by Citizens Bank to give effect to this provision.

Handwritten signatures and initials, including a large signature that appears to be 'L. C. ...' and other initials to the right.

13.2 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally, by mail or by facsimile transmission and shall be deemed to have been served by personal delivery when delivered; if by mail, 72 hours after posting; and if by facsimile transmission, when despatched.

13.3 This Agreement shall be binding on, and shall enure for the benefit of, the successors and assigns of each of the parties hereto.

13.4 Neither party may assign its rights or obligations in whole or in part hereunder without the prior written consent of the other party hereto.

13.5 Each party undertakes with the other to do all things reasonably within its power which are necessary or desirable to give effect to the spirit of this Agreement.

13.6 The parties hereto shall use their respective reasonable endeavours to procure that any necessary third party shall do, execute and perform all such further deeds, documents, assurances, acts and things as any of the parties hereto may reasonably require by notice in writing to the other to carry the provisions of this Agreement into full force and effect.


13.7 Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the parties hereto and neither of them shall have any authority to bind the other in any way.

13.8 This Agreement constitutes the entire Agreement between the parties with respect to the matters dealt with herein and supersedes any previous agreement between the parties hereto in relation to such matters. Each party hereto hereby acknowledges that in entering into this Agreement, it has not relied on any representation or warranty, save as expressly set out herein. No variation of this Agreement shall be valid or effective unless made in writing and signed by the party or parties to be bound.

13.9 No failure to exercise, and no delay in exercising on the part of either party hereto, any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

13.10 Notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable, the remaining provisions shall continue in full force and effect.

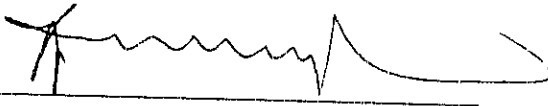
13.11 This Agreement shall be governed by, and construed in accordance with, Jamaican law.



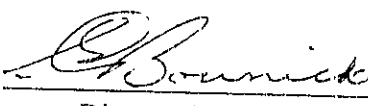
13.12 This Agreement shall be subject to the approval of the Minister of Finance pursuant to Section 20 of the Financial Institutions Act.

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

EXECUTED UNDER THE COMMON  
SEAL of **FINSAC LIMITED** and  
delivered as and for its proper act and deed  
by Patrick Hylton  
Director, and Gladstone Bonnick  
Director/Secretary in the presence of:

)   
\_\_\_\_\_

) Director

)   
\_\_\_\_\_

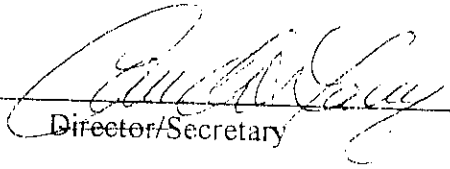
) Director/Secretary

\_\_\_\_\_  
WITNESS

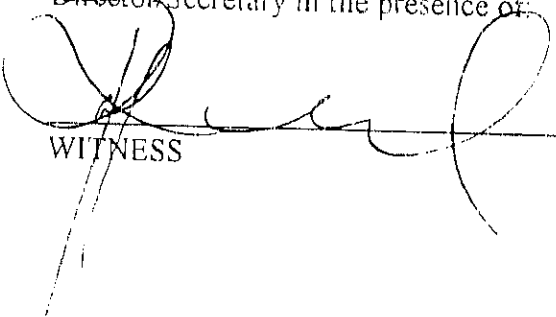
EXECUTED UNDER THE COMMON  
SEAL of **CITIZENS BANK LIMITED**  
and delivered as and for its proper act and  
deed by **MICHAEL WRIGHT**  
Director, and **CAMILLE FACEY**  
Director/Secretary in the presence of:

)   
\_\_\_\_\_

) Director

)   
\_\_\_\_\_

) Director/Secretary

  
\_\_\_\_\_  
WITNESS