

**SERIES GUARANTEE**

issued by

**QUADRIDGE TRUST SERVICES PROPRIETARY LIMITED**  
**(as trustee for the time being of the Harcourt Street Security SPV 5 Trust)**  
**(in its capacity as Series Security SPV)**

in favour of

**THE SERIES SECURED CREDITORS**  
**in relation to Series Transaction 5 for the Issuer as read with the**  
**Applicable Transaction Supplement**



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## SERIES GUARANTEE

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(as trustee for the time being of the Harcourt Street Security SPV 5 Trust)  
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in favour of

THE SERIES SECURED CREDITORS  
in relation to Series Transaction 5 for the Issuer as read with the  
Applicable Transaction Supplement

### **1 DEFINITIONS AND INTERPRETATION**

- 1.1 The Common Terms Agreement in respect of the Series Transaction 5 signed by, among others, the parties to this Agreement (as such agreement may be amended, novated and/or substituted from time to time in accordance with its terms) is expressly and specifically incorporated into this Series Guarantee and, accordingly, the expressions defined in, and the terms and provisions of, the Common Terms Agreement (as so amended, novated and/or substituted) shall, except where the context otherwise requires and save where otherwise defined or provided for in this Series Guarantee, have the same meanings in this Series Guarantee and shall form part of this Series Guarantee.
- 1.2 Unless the context indicates otherwise, terms and conditions not separately defined in this Agreement shall, in this Agreement, bear the meanings given to them in the Programme Memorandum dated 17 February 2016 (as amended or supplemented in accordance with its terms) and in the Applicable Transaction Supplement in respect of Series Transaction 5 dated 26 October 2017 (as amended or supplemented in accordance with its terms).



## 2 INTRODUCTION

- 2.1 The Issuer proposes to issue Notes under its Secured Note Programme, as more fully described in the Programme Memorandum as read with the Applicable Transaction Supplement.
- 2.2 The Series Security SPV has been established for the purpose of holding and realising security for the benefit of the Series Secured Creditors in respect of the obligations of the Issuer to the Series Secured Creditors in terms of the Series Transaction Documents.
- 2.3 In order to give effect to the principles set out in 2.2 above, the Series Security SPV shall, in respect of the Series Transaction 5 –
- 2.3.1 separately guarantee to each of the Series Secured Creditors on the terms set out in this Series Guarantee, the payment of their claims on the occurrence of a Series Transaction Event of Default;
- 2.3.2 obtain and hold the Series Indemnity from the Issuer against any claims made against the Series Security SPV pursuant to this Series Guarantee; and
- 2.3.3 if a Series Transaction Event of Default occurs –
- 2.3.3.1 claim from the Issuer in terms of the Series Indemnity;
- 2.3.3.2 realise the Series Security, if necessary; and
- 2.3.3.3 pay to each Series Secured Creditor, in accordance with this Series Guarantee and in the order and subject to the terms of the Post-Enforcement Series Priority of Payments after delivery of an Enforcement Notice, the amount of its claim.

## 3 STIPULATIO ALTERI

- 3.1 This Series Guarantee constitutes a stipulation in favour of each of the Series Secured Creditors and shall be deemed to have been accepted by each of them and to constitute a binding agreement with each of them



(notwithstanding that the Series Secured Creditors shall not have executed this document) as follows –

- 3.1.1 by each of the Series Secured Creditors other than the Series Noteholder(s), upon the execution of the Series Transaction Document to which such Series Secured Creditor is a party; and
- 3.1.2 by the Series Noteholder(s) upon the issue and subscription for, or transfer of, Notes to such Series Noteholder(s), as the case may be.
- 3.2 On the Date of Signature of this Series Guarantee, the Series Security SPV shall deliver the original signed Series Guarantee to the Administrator which has, in accordance with the undertaking annexed to this Series Guarantee as Annexure A, undertaken to hold such original Series Guarantee on behalf of the Series Secured Creditors and to make certified copies of the Series Guarantee available to the Series Secured Creditors upon written request by the Series Secured Creditors, in accordance with such undertaking.
- 3.3 By signing the Series Guarantee, the Series Security SPV is deemed to have notice of the Terms and Conditions, and the Series Security SPV shall be bound by those provisions of the Terms and Conditions which confer rights and/or impose obligations on the Series Security SPV and undertakes not to issue any guarantee other than this Series Guarantee.

#### **4 GUARANTEE BY SERIES SECURITY SPV**

- 4.1 The Series Security SPV hereby irrevocably undertakes to each Series Secured Creditor that if a Guarantee Event (as defined in 5 below) arises, the Series Security SPV shall pay to each such Series Secured Creditor, in terms of and subject to the Post-Enforcement Series Priority of Payments, the amount owing to it by the Issuer and then due for payment under the relevant Series Transaction Document.
- 4.2 The Series Secured Creditors agree that any payment by the Series Security SPV to any Series Secured Creditor in terms of the Series Guarantee shall discharge the Issuer's liability in like amount to such Series Secured Creditor



for the underlying obligations of the Issuer to the Series Secured Creditor, to which such payment relates.

## **5 GUARANTEE EVENT**

5.1 A Guarantee Event shall be –

5.1.1 In the case of a Series Noteholder –

5.1.1.1 a vote for early redemption of the Notes by the Controlling Class of Series Noteholder(s) as contemplated in the Terms and Conditions pursuant to the occurrence of a Series Transaction Event of Default under the Notes; or

5.1.1.2 a declaration by the Series Security SPV that the Notes are immediately due and payable as contemplated in the Terms and Conditions pursuant to the occurrence of a Series Transaction Event of Default under the Notes;

5.1.2 in the case of any other Series Secured Creditor –

5.1.2.1 the occurrence of a Series Transaction Event of Default under the relevant Series Transaction Document concluded with that Series Secured Creditor; or

5.1.2.2 the Notes becoming immediately due and payable pursuant to the occurrence of any other Series Transaction Event of Default.

5.2 The Series Security SPV shall not be required to take any steps to ascertain whether any Guarantee Event has occurred and until the Series Security SPV has actual knowledge of a Guarantee Event, it shall be entitled to assume that no Guarantee Event has taken place.



## 6 SERIES GUARANTEE CONDITIONS

### 6.1 Separate obligation

The Series Security SPV acknowledges that the Series Guarantee is given on the basis that it constitutes a separate obligation enforceable against the Series Security SPV even though the Series Secured Creditors have not proceeded against or claimed payment from the Issuer.

### 6.2 Series

The Series Security SPV undertakes in favour of the Series Secured Creditors that whenever it receives a demand for payment under the Series Guarantee from a Series Secured Creditor following the occurrence of a Guarantee Event, it will pay all amounts due and payable in terms of 4.1 to the Series Secured Creditors, subject to 6.3.1, 6.3.2 and 6.3.3.

### 6.3 Maximum recourse

6.3.1 The Series Security SPV shall not be liable under the Series Guarantee to pay the Series Secured Creditors a net amount which in the aggregate exceeds the net amount which the Series Security SPV recovers from the Issuer pursuant to the Series Indemnity and from the Series Assets realised pursuant to the Series Security Agreements.

6.3.2 The Series Security SPV shall only be obliged to make any payments in respect of the Series Guarantee, if, and to the extent that, it has recovered money from the Issuer pursuant to the Series Indemnity or from Series Assets realised pursuant to the Series Security Agreements.

6.3.3 Notwithstanding anything to the contrary herein provided, the Series Security SPV shall, out of the net amount recovered pursuant to the Series Indemnity or realised pursuant to the Series Security Agreements, pay the Series Secured Creditors to whom it has given the Series Guarantee in the sequence set out in the Post-Enforcement Series Priority of Payments after delivery of an Enforcement Notice, in the same manner as the Issuer would in the ordinary course have paid each Series Secured



Creditor, which for the avoidance of doubt shall mean that payments to Series Noteholder(s) by the Series Security SPV shall be made by making payment to the holders of the Notes as reflected in the Register.

#### 6.4 **Enforcement of remedies**

- 6.4.1 The Series Security SPV undertakes to enforce the remedies available to it under the Series Indemnity and Series Security Agreements, and such other remedies as may be available to it at law, promptly upon any claim being made in terms of the Series Guarantee, provided that the Series Security SPV is not obliged to take any action (including the exercise of any right, power, discretion or obligation) until the Series Secured Creditors place it in funds equivalent to the amount which the Series Security SPV determines may become payable by it in respect of any liabilities, costs or expenses which will or may arise from the Series Security SPV taking that action, or it is indemnified by the Series Secured Creditors to its reasonable satisfaction in a form acceptable to it, in respect of any such liabilities, costs or expenses.
- 6.4.2 Without limiting its rights, powers and discretions, the Series Security SPV will not be required to exercise any right, power or discretion in terms of the Series Guarantee (whether in relation to requiring anything to be done, forming any opinion or giving any notice, comment or approval) without the specific instructions of each of the Series Secured Creditors (which in the case of Series Noteholders, shall be given by Extraordinary Resolution of the Controlling Class).
- 6.4.3 The Series Security SPV may engage and pay for (using the funds obtained pursuant to 6.4.2) the advice or services of any lawyers, accountants or other experts whose advice or services may seem to the Security SPV to be reasonably necessary in relation to any of the provisions of any Series Transaction 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 Series Security SPV, and the Series Security SPV shall not be responsible for any loss occasioned or arising by so acting or relying.





6.4.4 The Series Security SPV will have no liability to the Issuer or any Series Secured Creditor in respect of anything done or omitted to be done in good faith and at the direction, or with the approval, of the Series Secured Creditors, and the Series Secured Creditors indemnify the Series Security SPV for any liabilities to any person so incurred. The liability of each Series Secured Creditor pursuant to such indemnity shall be *pro rata* to the aggregate amounts due and payable under the Series Transaction Documents by the Issuer to the Series Secured Creditors.

6.4.5 If the amount recovered by the Series Security SPV from the Issuer in terms of the Series Indemnity or realised by it from the Series Assets pursuant to the Series Security Agreements is insufficient to pay all the Series Secured Creditors, creditors ranking prior to others in the Post-Enforcement Series Priority of Payments shall be paid first.

#### 6.5 **Additional rights**

The rights of the Series Secured Creditors under the Series Guarantee are in addition to and are not diminished or otherwise affected by any other rights under the Series Transaction Documents or provided by law. Any settlement or discharge given by the Series Secured Creditors to the Series Security SPV in respect of the Series Security SPV's obligations under the Series Guarantee or any other agreement reached between the Series Secured Creditors and the Series Security SPV in relation to the Series Guarantee shall be, and be deemed always to have been, void if any act on the faith of which the Series Secured Creditors gave the Series Security SPV that settlement or discharge or entered into that agreement is subsequently voided by or in pursuance of any provision of law.

#### 6.6 **Waiver of defences**

On signature of the Series Guarantee, the Series Security SPV shall be, and shall remain, bound to the full extent of the Series Guarantee, which shall at all times be fully and immediately enforceable, despite –



- 6.6.1 any of the obligations of the Issuer in respect of amounts owing to any Series Secured Creditors or any security granted by the Issuer or any other person in respect of such amounts owing, being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 6.6.2 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Issuer or the Series Security SPV or any other person;
- 6.6.3 the Issuer being deregistered, being placed in liquidation or under Business Rescue (whether provisionally or finally, voluntarily or compulsorily), or otherwise becoming subject to any other legal liability or to any law for the benefit or assistance of debtors and/or creditors, or entering into or becoming subject to any scheme of arrangement or compromise;
- 6.6.4 any security contemplated in the Series Security Agreements not being obtained or protected or being released or ceasing to be enforceable or ceasing to be held for any other reason;
- 6.6.5 the obligations of the Issuer or the Series Security SPV to the Series Secured Creditors being varied or novated, whether by agreement, operation of law or otherwise;
- 6.6.6 any amendment (however fundamental) or replacement of any Series Transaction Document or any other document or security;
- 6.6.7 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, the Issuer or any other person; or
- 6.6.8 any other cause which, but for the provisions of this clause, would or might have the effect of terminating, discharging or in any other manner whatsoever affecting any of the Series Security SPV's obligations under the Series Guarantee.



6.7 The Series Security SPV undertakes, in respect of any claim arising out of the Series Guarantee, not to raise the defence that there is no cause or reasonable basis for the granting of the Series Guarantee.

6.8 **Continuing guarantee**

The Series Guarantee is a continuing security and shall remain in force notwithstanding any fluctuation in or extinction for any period whatsoever of any amounts owing to the Series Secured Creditors by the Issuer or any intermediate payment of any of such debts. The Series Guarantee shall continue to apply to the remaining balance of the amounts owing to the Series Secured Creditors by the Issuer until such amounts have been finally extinguished in full.

6.9 **Reinstatement**

If any payment or other performance which has had the effect of reducing or discharging the Series Security SPV's liability under the Series Guarantee is wholly or partly set aside, or refunded by agreement, after the Series Security SPV's release from the Series Guarantee, the Series Security SPV's liability for the indebtedness reduced or discharged by the payment or other performance shall revive.

6.10 **Immediate recourse**

The Series Security SPV waives any right that it may have to first require any Series Secured Creditor to make any demand of the Issuer, to proceed against or claim payment from the Issuer or any third party, to take action or obtain judgment in any court against the Issuer or to make, file or prove any claim in the winding-up or dissolution of the Issuer before claiming under the Series Guarantee.

6.11 **Renunciation of benefits**

The Series Security SPV acknowledges that its obligations under this Series Guarantee are principal obligations and renounces any benefits to which it may be entitled in law as a result of the Series Guarantee including, without



limitation, the benefits of division, excussion, cession of actions, revision of accounts and no value received. The Series Security SPV acknowledges that it is fully aware of the meaning and effect of those benefits.

#### 6.12 **Duration**

The Series Security SPV shall not be entitled to revoke the Series Guarantee before the obligations of the Issuer to the Series Secured Creditors in terms of the Series Transaction Documents have been finally extinguished in full.

#### 6.13 **Liability**

The provisions of the Series Guarantee shall not limit any liability on the part of the Series Security SPV to Series Secured Creditors for any loss occasioned by or arising from the Series Security SPV's dishonesty, negligence or breach of contract, including, without limitation, breach of the provisions of the Series Guarantee.

#### 6.14 **Subordination, limited recourse, limited enforcement and non-petition provisions**

The Series Guarantee is given to each Series Secured Creditor on the basis that each such Series Secured Creditor has expressly agreed, in the Series Transaction Document to which such Series Secured Creditor is a party, to the subordination, limited recourse, limited enforcement and non-petition provisions in relation to its claims against the Issuer and/or the Series Security SPV.

### 7 **COSTS**

7.1 All legal and other costs and expenses which the Series Security SPV expends or incurs, or is required to expend or incur, in taking action under the Series Guarantee (including, without limiting the generality of the foregoing, the amounts determined by the Series Security SPV in accordance with the proviso to 6.4.1 and any further costs and expenses incurred by the Series Security SPV in claiming under the Series Indemnity and in realising the property pursuant to the other Series Security Agreements) shall be borne by the Series



Secured Creditors, *pro rata* to the aggregate amounts due and payable by the Issuer to the Series Secured Creditors under the Series Transaction Documents.

- 7.2 Each Series Secured Creditor agrees that the Series Security SPV shall be entitled to set off any amounts owed by such Series Secured Creditor to the Series Security SPV in terms of 7.1 against the amount recovered and received by the Series Security SPV pursuant to the Series Indemnity and from the Series Assets realised pursuant to the other Series Security Agreements, and due and payable to such Series Secured Creditor in terms of the Series Guarantee.

## 8 NOTICES

- 8.1 For the purposes of this Series Guarantee –

8.1.1 all notices to Series Noteholders shall be given in the manner contemplated in Condition 17 and the provisions of Condition 17 shall apply *mutatis mutandis* to the giving of such notice;

8.1.2 all notices to a Series Secured Creditor (other than a Series Noteholder) shall be given in the manner contemplated in the relevant Series Transaction Document and the relevant provisions of the relevant Series Transaction Document shall apply *mutatis mutandis* to the giving of such notice.

## 9 VARIATION

No amendment to this Series Guarantee may be effected unless in writing and signed by or on behalf of the Series Security SPV and approved –

- 9.1 by an Extraordinary Resolution of the Controlling Class of Series Noteholders;  
and
- 9.2 in writing by each of the Series Secured Creditors (other than the Series Noteholders).



## 10 REPORT ON REALISATION PROCESS

The Series Security SPV shall furnish the Series Secured Creditors with monthly reports on the realisation process, in the event that a demand is made under this Series Guarantee.

Signed at SANDTON on 26 October 2017

for Quadridge Trust Services Proprietary Limited (as trustee for the time being of the Harcourt Street Security SPV 5 Trust) (in its capacity as Series Security SPV)

A handwritten signature in black ink, appearing to read 'W. J. ...'.

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who warrants that he is duly authorised hereto



## **ANNEXURE A - GUARANTEE CUSTODY CERTIFICATE**

To : Harcourt Street 1 (RF) Limited  
c/o Investec Bank Limited  
100 Grayston Drive  
Sandown  
Sandton  
2196

Att: Head DCM Ops  
Telefax: +27 11 286 7721  
Email FPLegal@Investec.co.za

And To : Harcourt Street Security SPV 5 Trust  
c/o Quadridge Trust Services Proprietary Limited  
1<sup>st</sup> Floor  
32 Fricker Road  
Illovo  
2196

Att: David Peter Towers  
Email: david@quadridge.co.za

Dear Sir/Madam

### **Series Guarantee to be issued by Harcourt Street Security SPV 5 Trust in favour of the Series Secured Creditors (the "Series Guarantee") of the Series Transaction 5**

Capitalised terms not specifically defined in this undertaking shall have the meaning assigned to such terms in the Series Guarantee.

We hereby undertake in favour of each of the Series Secured Creditors to receive and hold in custody the original signed Series Guarantee to be delivered to us by the Series Security SPV on the Date of Signature of the Series Guarantee. This undertaking shall not imply any relationship of trust, duty of care or fiduciary obligation on our part to take any action in relation to the Series Guarantee or any other Series Transaction Document, except to comply with the terms of this letter.

We undertake, upon the written request by any Series Secured Creditor and at the cost of such Series Secured Creditor, to make available to the Series Secured Creditor, a certified copy of the Series Guarantee within two Business Days of receipt of such



written request and to deliver the original to court where required in terms of a litigation process.

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

Upon termination of our appointment as Administrator, we shall deliver the original Series Guarantee to a substitute Administrator appointed in terms of the Series Transaction Documents.

This undertaking constitutes an irrevocable stipulation in favour of the Series Secured Creditors and shall be deemed to have been accepted by them, *mutatis mutandis*, in the manner envisaged in clause 3 of the Series Guarantee.

Yours faithfully

Signed at

on

2017

for Investec Bank Limited (in its capacity as Administrator)

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who warrants that he is duly  
authorised hereto

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who warrants that he is duly  
authorised hereto