

AGREEMENT OF LEASE

made and entered into by and between

TWIN CITY DEVELOPMENT (PTY) LTD

For the Property known as BLUE HAZE MALL

Herein represented by Johan Andre Visagie

being duly authorised

(hereinafter referred to as “ the Lessor/Landlord”)

and

OBC GROUP (PTY) LTD

Registration Number: 2004/001224/07

trading as OBC CHICKEN

Herein represented by ANTONIO AUGUSTO FERREIRA DA FONSECA (ID NO. 660130
5059 080)

being duly authorised

(hereinafter referred to as “the Applicant/ Tenant”)

The Landlord hereby lets to the Tenant the Leased Premises as defined in and subject to the terms and conditions of the Schedule, the standard terms and conditions of Lease and Annexures, as more fully set out hereunder

SCHEDULE

1. Landlord	Twin City Development (Pty) Ltd Registration Number: 1984/006373/07 VAT No.: 4890106075				
2. Landlord's Address	Physical : Suite 301, Waterkloof Gardens, 270 Main Street, Brooklyn, Pretoria Postal : PO Box 27, Groenkloof, 0027 Email : marelize@twincity.co.za				
3. Tenant	OBC Group (Pty) Ltd T/A OBC Chicken Registration Number: 2004/001224/07 VAT Registration Number: 4500170958				
4. Tenant's Address	Physical: 96 15 th Road, Randjespark, Midrand, 1685 Postal Address: PO Box 197, Roohuiskraal, 0154 Contact: 0861 622 622 Email: morne@obcchicken.co.za				
5. Leased Premises Comprising collectively of:					
5.1. Shop No/s.	117 measuring approximately 1012, square meters in the Shopping Centre known as Blue Haze Mall ("the Building"), which is situated on Erven 1500 and 1501, Hazyview Ext 27 Township are notarial tied with Erf 1260 Hazyview Ext 6 Township, Registration Division JU Mpumalanga Province, by virtue of Notarial Deed K314/20105 ("the Property").				
6. Commencement Date	1 November 2015				
7. Termination Date	31 October 2020				
8. Beneficial Occupation	N/A				
9. Renewal Period	5 Years				
10. Rental and Other Charges					
10.1 Basic Monthly Rental	The basic monthly rental payable by the Tenant to the Landlord shall be:				
FROM	TO	RATE P/M²	VAT Exclusive	VAT	VAT Inclusive
01/11/2015	31/10/2016	R 121.52	R 122 978.24	R 17 216.95	R 140 195.19
01/11/2016	31/10/2017	R 130.63	R 132 201.60	R 18 508.22	R 150 709.83
01/11/2017	31/10/2018	R 140.43	R 142 115.16	R 19 896.12	R 162 011.28
01/11/2018	31/10/2019	R 150.96	R 152 773.79	R 21 388.33	R 174 162.12
01/11/2019	31/10/2020	R 162.28	R 164 229.38	R 22 992.11	R 187 221.49
10.1. Basic Monthly Rental Escalation Rate	a compounded annual rate of 7.5% (eight comma five percent), escalating at the anniversary of the Commencement Date.				

10.2. Municipal And Utility Charges		The Tenant shall pay the municipal and utility charges raised and levied upon the Building and Property (including the Leased Premises) as stipulated in clause 4 of the Standard Terms and Conditions.		
10.3. Turnover Rental		N/A		
10.4. Security Charges		R 4.62 p/m² (plus future increases)		
10.5. Tenant’s Financial year end		JUNE		
10.5 Marketing Fund Contribution:		The monthly Marketing Fund Contribution payable by the Tenant to the Landlord shall be 2% of the net rental:		
FROM	TO	VAT Exclusive	VAT	VAT Inclusive
01/11/2015	31/10/2016	R 2 459.56	R 344.33	R 2 803.90
01/11/2016	31/10/2017	R 2 644.03	R 370.16	R 3 014.19
01/11/2017	31/10/2018	R 2 842.30	R 397.92	R 3 240.22
01/11/2018	31/10/2019	R 3 055.47	R 427.76	R 3 483.24
01/11/2019	31/10/2020	R 3 284.58	R 459.84	R 3 744.42
11. Tenant’s pro rata share (This will be used as basis to calculate contributions payable by the Tenant as recorded in clauses 4.2, 4.6, 6.3 and 15.6)		The pro rata share as at the Commencement date shall be confirmed. Pro rata share means the ratio between the total area that the Leased Premises bears to the gross lettable area of the Property or Building (measured per SAPOA) from time to time.		
12. Use of Leased Premises		OBC Chicken and Meat / OBC Fried Chicken		
13. Deposit in the amount of		N/A		
14. Rental payment date		Commencement date and thereafter on the 1 st day of each month.		
15. Suretyships to be signed by:		N/A		
16. Administration Costs		The Landlord shall be entitled to charge R2 500.00 (two thousand five hundred rand) plus VAT to draw the Offer and associated Agreement of Lease and Annexures thereto.		
17. Special Terms & Conditions		<ul style="list-style-type: none">• Store taken as is;• Signage and layout plans must be submitted for approval before commencement.		
18. ANNEXURES				
Annexure A	-	Standard Terms and Conditions		
Annexure B	-	Tenant’s Resolution		
Annexure C	-	Site and Shop Location Plan		

SIGNED at on this the day of 201...

As Witnesses:

1. _____

LANDLORD

(Full name of signatory),
for and on behalf of the **Landlord**:
herein represented by
_____ who warrants that
he/she is duly authorised thereto

SIGNED at on this the day of 201....

As Witnesses:

1. _____

LESSEE

(Full name of signatory),
for and on behalf of the **Tenant**:
who warrants that he/she is duly authorised
thereto.

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STANDARD TERMS AND CONDITIONS

STANDARD TERMS AND CONDITIONS

1. INTERPRETATION AND DEFINITIONS

1.1. In this Lease Agreement and in the Annexures hereto –

- 1.1.1. "the Lease Agreement" means the Agreement of Lease to which these standard terms and conditions of lease are attached, the Schedule, the Annexures therein described and attached and these Standard Terms and Conditions of Lease;
- 1.1.2. "the appurtenances" means all the installations and appliances in and on the Leased Premises of which the Landlord is the owner, including, without limiting the generality of the foregoing, doors, door handles, keys, locks, windows, glass, water supply and effluent/ sewerage system, and water pumps, basins, water taps, toilets, kitchens, ablution units, sprinkler systems, standby generators (where applicable), light fittings, electrical switches, power plug points, power skirting, firefighting appliances, air conditioners, heat pumps, mechanical ventilators, extraction systems, grease traps, partitions, fittings and fixtures, fixed carpets, geysers and the like features applied in the operation of the Leased Premises;
- 1.1.3. "the Building" means the Building referred to in Item 5 of the Schedule;
- 1.1.4. "the Landlord" means the Landlord described in Item 1 of the Schedule;
- 1.1.5. "the Landlord's address" means any one of the addresses referred to in Item 2 of the Schedule;
- 1.1.6. "the Landlord's architect" means the architect from time to time nominated and appointed by the Landlord;
- 1.1.7. "the Landlord's auditor" means the auditor from time to time nominated and appointed by the Landlord;
- 1.1.8. "the Landlord's quantity surveyor" means the quantity surveyor from time to time nominated and appointed by the Landlord;
- 1.1.9. "the Leased Premises" means the Leased Premises more fully described in Item 5 of the Schedule together with any areas in respect of which the Tenant has exclusive use;
- 1.1.10. "the Common Areas" means those portions of the Building not designed or intended to form part of the usable areas let directly to Tenants but which are used, instead, in common by all the Tenants of and visitors to the Building including, but without derogating from the generality of the foregoing, entrances, exits, lifts, staircases, escalators, foyers, gardens, toilets, loading zones, parking areas, service roads, kitchens, malls, passages, service corridors and yards and all other amenities provided by the Landlord for general use in common by Tenants in the Building, their servants, employers, clients and customers in or about the Building. Nothing contained in this definition shall be construed as imposing any obligation on the Landlord to provide any such conveniences as are specifically mentioned above, unless stipulated otherwise in this Lease Agreement;
- 1.1.11. "the Property" means the Property referred to in Item 5 of the Schedule;
- 1.1.12. "*pro rata* share" means the Tenant's *pro rata* share from time to time as specified in Item 11 of the Schedule at the Commencement Date;

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- 1.1.13. "the SAPOA Method" means the SAPOA system of measurement of floor area in commercial Buildings stipulated in the SAPOA guidelines in force effective from 7 November 2007.
- 1.1.14. "the Tenant" means the Tenant described in Item 3 of the Schedule;
- 1.1.15. "the Tenant's address" means any one of the addresses referred to in Item 4 of the Schedule;
- 1.1.16. unless inconsistent with the context, words relating to one gender shall include the other gender, words relating to the singular shall include the plural and the other way around (*vice versa*) and words relating to natural persons shall include juristic persons and the other way around (*vice versa*);
- 1.1.17. when any number of days is prescribed in this Lease Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, and shall include Saturdays, Sundays and public holidays;
- 1.1.18. a reference to 'month' in this Lease Agreement means a calendar month;
- 1.1.19. in this Lease Agreement all titles and headings are used for reference and convenience only and are in no way deemed to explain, modify, amplify or aid in the interpretation of this Lease Agreement;
- 1.1.20. the deletion of clauses in this Lease Agreement which remain readable after such deletion shall be regarded as if they had not been included herein insofar as this Lease Agreement is concerned and shall not be used in the interpretation of this Lease Agreement.
- 1.1.21. Any provision of this Lease Agreement imposing a restraint, prohibition or restriction on the Tenant shall be so construed that the Tenant is not only bound to comply therewith but is also obliged to procure that the same restraint, prohibition or restriction is observed by everybody occupying or entering the Leased Premises or any other part of the Property or the Building through, under, by arrangement with, or at the invitation of, the Tenant, including (without limiting the generality of this provision) its Associates and the directors, members, officers, employees, agents, customers and invitees of the Tenant or its Associates.
- 1.1.22. References to notices, statements and other communications by or from the Landlord include notices, statements and other communications by or from the Landlord's agent and/or consultants.

2. EXTENT OF THE LEASED PREMISES

- 2.1. If, for any reason, it becomes necessary or, in the opinion of the Landlord, desirable, for the area of the Leased Premises to be re-measured or calculated, the determination of the re-measurement or calculation by the Landlord's architect of the Leased Premises' area shall be in accordance with the SAPOA Method of measuring floor areas in retail Buildings and shall be final and binding on the parties.

3. COMMENCEMENT AND DURATION OF THIS LEASE

- 3.1. The Lease Agreement will commence on the Commencement Date, and, save for any termination on the grounds allowed for in this Lease Agreement and/or by law, and/or any written agreement providing for this Lease's extension and/or renewal, will terminate on the Termination Date.

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- 3.2. The Landlord will give the Tenant Beneficial Occupation of the Leased Premises on the Beneficial Occupation Date, as set out in Item of the Schedule, to enable the Tenant to install fixtures and fittings in the Leased Premises, provided that the Lease Agreement is signed by the Tenant and in possession of the Landlord, the Deposit is paid or the bank guarantee is furnished and Tenant provides all FICA documents. The Tenant will be liable for the Tenant's metered charges as well as its pro rata share, where applicable, from time to time of the Municipal and Other Charges as envisaged in clause 9 hereof. The Tenant acknowledges that it will have no claim of whatsoever nature against the Landlord if Beneficial Occupation is not given by the Landlord to the Tenant on the Beneficial Occupation Date for any reason whatsoever.
- 3.3. The Tenant shall do all things necessary to commence and continue with "Shop fitting" and installation of the Leased Premises within 72 (seventy two) hours of taking Beneficial Occupation.
- 3.4. Should the Leased Premises not be ready for occupation by the Tenant on the Commencement Date of the Lease Agreement as specified in Item of the Schedule for any reason whatsoever then the Tenant shall have no claim for cancellation of this Lease Agreement or for damages or for other right of action against the Landlord and shall take occupation of the Leased Premises on the date upon which the Leased Premises are in fact ready for occupation, provided that the Termination Date as specified in Item of the Schedule shall in no way be varied by reason of the Tenant taking occupation after the Commencement Date for any reason. Notwithstanding the above, should the Leased Premises not be ready for occupation by the Tenant 90 (ninety) calendar days after the Commencement Date, then the Tenant shall have the right to cancel this Lease Agreement, provided that such delay has not been caused by the Tenant.
- 3.5. Should any dispute arise as to when the Leased Premises are in fact ready for occupation, the decision of the Landlord's architect, as an expert and not as an arbitrator, in regard to such a dispute shall be final and binding on the parties.

4. RENT AND PAYMENTS

- 4.1. The rental and other amounts payable by the Tenant to the Landlord as set out in Item 10 of the Schedule and clauses 5, 6, 7, and 9 of these Standard Terms and Conditions of Lease shall be payable monthly, in advance, on or before the 1st (first) day of each calendar month.
- 4.2. All amounts due by the Tenant to the Landlord in terms of this Lease Agreement will be paid in the currency of the Republic of South Africa (free of deduction, bank charges or set off or demand). All payments due by the Tenant in terms of the Lease Agreement will be made by one of the following means –
 - 4.2.1. ~~if applicable (see Annexure "D"), by debit order; failing which~~
 - 4.2.2. by direct deposit into the Landlord's bank account, at all times furnishing the correct Tenant Number as deposit reference; or
 - 4.2.3. by electronic funds transfer, at all times furnishing the correct Tenant number as deposit reference.
- 4.3. Payment of any amount due under this Lease Agreement shall be deemed to have been made only when the relevant amount has been duly credited to the banking account of the Landlord or its nominee.
- 4.4. Without prejudice to and in addition to the other rights and remedies of the Landlord, the Tenant shall pay the Landlord interest on any moneys due but unpaid by the Tenant to the Landlord in terms of this Lease Agreement, such interest to be calculated at the mora

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interest rate as defined in the Prescribed Rate of Interest Act No. 55 of 1975 (as amended) and such interest shall be compounded monthly from the due date for payment of the moneys in respect of which the interest is chargeable until the payment of such moneys in full.

- 4.5. The Landlord shall be entitled to allocate payment received and the Tenant shall not be entitled to attach the condition to any payment submitted to the Landlord to the effect that it is being tendered in full and final settlement of the Tenant's obligations. Any such condition purporting to be in full and final settlement shall not be binding on the Landlord until the Landlord shall have notified the Tenant of such acceptance.
- 4.6. The Landlord reserves the right to nominate a different bank account for payment from time to time and such change will be communicated to the Tenant by the Landlord.
- 4.7. As from commencement date, all payments in terms of this Lease will be made to the following account:

Account name: **TWIN CITY DEVELOPMENT (PTY) LTD**

Account number: **1631016466**

Branch Code; **163 145**

Tenant reference:
(as appears on the statement to be recorded with any deposit)

5. TURNOVER RENTAL

- 5.1. The rent payable by the Tenant during the period of this Lease Agreement shall be the greater of:

5.1.1 the basic monthly rent payable in terms of Clause 4; or

5.1.2 the turnover rent as stipulated in Item 10.3 of the Schedule, based on the Tenant's net turnover and calculated in terms of this clause 5.

- 5.2. Definitions of "net turnover"

For the purposes hereof the expression "net turnover of the Tenant" shall mean in regard to any period, the net selling price (excluding interest, finance and other charges, and any VAT or other tax or imposition levied in connection with the sale of goods) of all goods sold by the Tenant and/or any licensee, concessionaire or sub-Tenant of the Tenant, upon or from the Leased Premises, and whether sold for cash, on credit, hire purchase, consignment or any other terms, and shall include any charges for services performed on or at the Leased Premises by the Tenant or any such licensee, concessionaire or sub-Tenant, together with the amount of all orders taken or received at the Leased Premises, whether such order be executed from the Leased Premises or elsewhere, minus –

5.2.1. any refunds given, credits passed or allowances made, on goods claimed to be defective or unsatisfactory, or for any other reason (provided that the sale of any such goods in respect of which the refund, credit or allowance is given or made shall have previously been included in the net turnover of the Tenant);

5.2.2. any *bona fide* discounts allowed;

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- 5.2.3. the sales price of any goods returned for exchange, provided that the sales price of the goods exchanged for the returned goods shall be included in the net turnover of the Tenant;
- 5.2.4. any amounts reasonably written off during the relevant period as bad debts, provided that should any bad debts which have been written off be subsequently recovered by the Tenant, then the amount or amounts so recovered shall be included in and form part of the net turnover of the Tenant for the relevant period during which the recovery of such bad debts has taken place;

and provided further that each charge or sale upon instalment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be effected, irrespective as to when the Tenant shall receive payment (whether full or partial) therefore.

- 5.3. Should, in any particular year, or portion thereof, during the currency of this Lease Agreement or any extension thereof, or during any period that the Tenant remains in unlawful occupation of the Leased Premises, the amount equal to the percentage as specified in Item 10.7 of the Schedule of the net turnover of the Tenant of that year or portion thereof exceed the sum of the basic monthly rental payable during that year or portion thereof (the excess being hereinafter referred to as "the turnover rental"), then the Tenant shall pay to the Landlord as additional rental in respect of that year or portion thereof an amount equivalent to the turnover rental in respect of that year or portion thereof.

5.4. Statements of net turnover

- 5.4.1. The Tenant shall at its own cost furnish the Landlord each month, within 15 (fifteen) days of the preceding month end, with an unaudited statement reflecting the net turnover of the Tenant in the applicable preceding month.
- 5.4.2. Notwithstanding the provisions of this Agreement, if the Commencement Date is not the first day of a calendar month, the pro-rata amount of rental and other charges shall be payable by the Tenant.
- 5.4.3. During the beneficial occupation period, the Tenant will not be liable to the Landlord for the payment of rent, but shall be liable for all other charges and imposts in terms of this Agreement.
- 5.4.4. The Tenant shall at its own cost furnish the Landlord once yearly, within 3 (three) months after the date of the financial year end of the Tenant as set out in Item of the Schedule with a statement, in each case certified as being correct by the Tenant's auditors for the time being, reflecting the net turnover of the Tenant in the applicable 12 (twelve) month period (ending on the financial year end of the Tenant, or as the case may be, commencing on the 1st (first) day after the said financial year end) or where applicable, in respect of the portion concerned of the applicable preceding period; provided that the Tenant shall be obliged, within 3 (three) months after the date of termination of this Lease Agreement, to furnish the Landlord with a statement reflecting the net turnover of the Tenant for the period from the due date for the last statement until the Termination Date. Each such statement shall clearly set forth separately –
 - 5.4.4.1. all items comprised in the definition of the net turnover of the Tenant as set forth above whether as additions or deductions thereto or therefore; and
 - 5.4.4.2. the net turnover (or where applicable, portion thereof) in the applicable preceding 12 (twelve) months.

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5.5. Payment of turnover rental

On the same date as any statement as provided for in clause 5.4.4 aforesaid is, or is due to be, furnished to the Landlord, the Tenant shall pay to the Landlord any turnover rental that may be payable in terms of clause 5.3 above.

5.6. Rights of inspection

The Landlord or its nominated representative/s shall have the right at all reasonable times to inspect at the Landlord's cost and expense the books and records of the Tenant and/or any licensee and/or concessionaire and/or sub-Tenant whose turnover is included in the net turnover of the Tenant as aforesaid, in so far as such books and records in fact relate to the net turnover of the Tenant and the Tenant undertakes that all such books and records of any such licensee, concessionaire and sub-Tenant shall be made so available for such inspection/s, on a strictly confidential basis.

5.7. Dispute

Should the Landlord dispute any of the amounts comprising the net turnover of the Tenant, as reflected in any such statement furnished to it as aforesaid, then the unanimous decision of the Landlord's and Tenant's auditors ("the auditors"), acting jointly, as to the accuracy of the Tenant's net turnover during a period shall be final and binding upon the parties. Should such auditors fail to arrive at a unanimous decision, then they shall jointly appoint another practicing auditor, being a chartered accountant with at least 10 (ten) years' experience, to act as an umpire ("the umpire") whose decision as to any such dispute shall be final and binding on the parties. The reference of any such dispute to an umpire shall not be regarded as a reference to arbitration proceedings, and neither the auditors nor such umpire shall be bound to follow any laws or rules of procedure or equity in arriving at their decision. The said auditors or the umpire, as the case may be, shall be entitled to make such order as to the payment of their and/or his costs and charges in connection with their or his decision as to the dispute as they or he may deem fit but, failing any such order, the costs and charges of the said auditor and/or the umpire shall be borne and paid by the Tenant.

6. MARKETING AND MARKETING FUND

- 6.1. The Tenant acknowledges that the Landlord will undertake the marketing, promotion and advertising of the Building. The Tenant shall be obliged to make a monthly contribution to the Marketing Fund established for this purpose, throughout the currency of this Lease Agreement (including any renewal thereof) in the amount specified in Item 10.5 of the Schedule. The said contribution to the Marketing Fund shall be payable monthly in advance no later than the first day of each calendar month, without deduction, set off for any cause whatsoever or demand and free of exchange.
- 6.2. The Tenant warrants that any information regarding goods or services, which are presented to the Landlord for any purpose, including but not limited to advertising, marketing or publishing, shall not be in contravention of the Consumer Protection Act 68 of 2008. The Tenant hereby indemnifies the Landlord and holds the Landlord harmless in respect of any claim whatsoever resulting from a breach of this warranty.

7. VALUE-ADDED TAX

- 7.1. All amounts referred to in this Lease Agreement, unless otherwise stated, exclude value added tax ("VAT") payable in terms of the Value Added Tax Act, No. 89 of 1991, as amended, and any other rates, taxes or imposts which may be payable thereon.

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- 7.2. Should the rate of VAT be altered at any time, then the amounts of VAT, wheresoever stated in this Lease Agreement, shall be adjusted accordingly.
- 7.3. In respect of any amounts payable by the Tenant under this Lease Agreement which is not quantified herein and which attract VAT, the Tenant shall pay to the Landlord the total of each such amount and the VAT thereon at the prevailing rate from time to time.
- 7.4. In the event of any other form of tax, imposed by Government or any regional, local or other competent authority, being payable by the Landlord on the rent or on any other amount due by the Tenant in terms of this Lease Agreement, the Tenant shall refund to the Landlord on demand the amount of such tax or other amount so payable by the Landlord, save that in the event that such refund is not permitted in terms of any law or regulation, then the rent shall increase by the amount of such tax with effect from the date such tax is payable, provided that any such increase in the rent arising out of such tax shall not be taken into account for the purposes of calculating any escalation of the rent in terms of this Lease Agreement.

8. DEPOSIT AND SURETYSHIPS

- 8.1. All the obligations of the Tenant in terms of this Lease Agreement shall be secured by a cash deposit for the amount specified in Item 13 of the Schedule. The deposit shall be paid to and retained by the Landlord until after the vacating of the Leased Premises by the Tenant and the complete discharge of all the Tenant's obligations to the Landlord arising from the Lease Agreement. The Tenant shall not be entitled to set off against the deposit amount any rent or any other amount payable by the Tenant to the Landlord. The Landlord shall have the right of applying the whole or portion of the proceeds of a bank guarantee (see clause 8.2 below) and/or the deposit towards payment of the rent or the amount of any other obligation of whatsoever nature for which the Tenant is responsible including damages arising during the Lease or on cancellation. If any portion of the bank guarantee or cash deposit is so applied, the Tenant shall forthwith reinstate the bank guarantee or cash deposit to its original amount, including the calculation and payment of turnover rental in terms of clause 5.
- 8.2. Alternatively to clause 8.1, the Tenant shall deliver to the Landlord at the Landlord's address an irrevocable guarantee by a registered bank for the amount specified in Item 13 of the Schedule and in a format approved by the Landlord, which guarantee shall furthermore be drafted so as to expire 1 (one) month after the Termination Date of this Lease Agreement or cancellation date thereof.
- 8.3. The cash deposit or bank guarantee, as the case may be, shall be delivered or paid to the Landlord on or before the Commencement Date of the Lease Agreement and failure to render a guarantee on the due date shall result in the amount being payable in cash at the Landlord's discretion.
- 8.4. ~~In the event of the Tenant being a private company, close corporation, trust or other legal entity, the Landlord shall procure that the sureties named in Item 15 of the Schedule bind themselves jointly and severally as surety and co-principal debtors in solidum to the Landlord for the due fulfilment by the Tenant of all terms of the Lease Agreement and any renewal thereof substantially in the form of Annexure "C".~~
- 8.5. The deposit shall be retained by the Landlord and/or its Agents and the deposit (if any), without interest, shall only be released 60 (sixty) days after the vacating of the Leased Premises by the Tenant and the complete discharge of all the Tenant's obligations to the Landlord arising from this Lease. The Tenant shall not be entitled to set-off against the deposit any rent or any other amount payable by it.
- 8.6. The Tenant shall also pay a deposit in respect of electricity and/or services charges upon signature hereof.

9. MUNICIPAL CHARGES AND UTILITIES (CHARGES PAYABLE BY THE TENANT)

- 9.1. Upon the Tenant taking occupation of the Leased Premises for whatever purpose or on the Commencement Date, whichever is the earlier, the Tenant shall be liable for and shall on demand pay –
- 9.1.1. any charges arising out of the use of gas, water, electricity, effluent*, refuse in respect of the Leased Premises, as well as any charges arising out of all water and electricity consumed by the Tenant in or on the Leased Premises, whether directly or indirectly, which shall include water and electricity consumed by any air-conditioner unit/s serving the Leased Premises;
 - 9.1.2. any electricity charges in respect of the Tenant's external signage or signage upon which the Tenant's name is displayed anywhere on the Building and/or Property;
 - 9.1.3. any charges arising from the collection, removal and destruction of the Tenant's wet refuse;
 - 9.1.4. the basic service and related charges in respect of the services referred to in this clause;
 - 9.1.5. the charges relating to meter reading; and
 - 9.1.6. the levy, rates, taxes or fees including those contemplated in clause 9.3 (if then in force) or a contribution to such levy, rates taxes or fees, determined on the basis contemplated in clause 9.2 below.
- 9.2. The Tenant's consumption of electricity, water, gas and effluent* shall be determined in accordance with separate sub meters. ~~If there are no sub meters within the Leased Premises, then the Tenant's consumption of electricity, water, gas and effluent* shall be calculated on the Tenant's pro rata share from time to time as specified in Item 11 of the Schedule;~~
- 9.3. The Tenant shall be liable for and pay to the Landlord on a monthly basis a pro rata share from time to time of:
- 9.3.1. any rates, taxes or fees payable by the Landlord to any authority in respect of the Leased Premises, or the Building or the Property above those applicable after the date of occupation or the Commencement Date, whichever is the earlier, ("the effective date");
 - 9.3.2. any new levy, rates taxes or fees in respect of the Leased Premises, or the Building or the Property, and /or any deposits or additional deposits in respect of the Leased Premises, or the Building or the Property become payable, which are not in force at the effective date and are subsequently imposed by such authority; and/or
 - 9.3.3. any City Improvement District initiated in terms of the applicable legislation, or any other similar initiative established in the area being payable by the Landlord in respect of the Leased Premises, the Property or the Building;
- then the Landlord shall be entitled to recover from the Tenant from time to time with effect from the date on which the increase, deposit, levy, rates, taxes or fees, as the case may be, becomes effective –

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- 9.3.3.1. the amount concerned if it relates exclusively to the Leased Premises; or
 - 9.3.3.2. if not, the Tenant's *pro rata* share from time to time as specified in Item 11 of the Schedule of such increase, deposit, levy, rates taxes or fees as the case may be.
 - 9.4. The Tenant will be liable for and will pay the Tenant's *pro rata* share from time to time as specified in Item 11 of the Schedule of all the charges in respect of common area electricity, water, effluent, sewer and refuse removal.
 - 9.5. On the earlier of the Beneficial Occupation Date or the Commencement Date –
 - 9.5.1. the Tenant shall be liable for and shall on demand pay the basic refuse charge and any refuse removal charges in respect of the Leased Premises, including any charges attributable to the Tenant's dedicated refuse removal system, and/or which are attributable to the Tenant's use of the refuse removal facilities for the Building. Other than the charge for any dedicated refuse removal system which the Tenant is responsible for, the refuse charge to be paid by the Tenant will be calculated on a *pro rata* basis on the basis of the Tenant's *pro rata* share from time to time as specified in Item 11 of the Schedule; and
 - 9.5.2. the Tenant shall be liable for and shall on demand pay the basic effluent charges and all effluent consumption charges in respect of the Leased Premises. If the Leased Premises is served by sub-meters in respect of water, electricity and/ or gas, the Tenant's percentage of the cost of such utilities including effluent shall be measured by such sub meters. If there is no sub meter the above charges will be calculated on the basis of the Tenant's *pro rata* share from time to time as specified in Item 11 of the Schedule.
- (*only if the local council calculates effluent charges based on water consumption and the Landlord elects to recover same on this basis).**
- 9.6. The Landlord may, in its sole, exclusive discretion, appoint a third-party service provider ("the electricity supplier") to procure the supply of electricity to the Leased Premises, to arrange for the metering and billing of electrical consumption by the Leased Premises and to administer the collection of payments in respect thereof. In such event:
 - 9.6.1. The Tenant shall have no recourse to the Landlord and the Landlord shall have no residual responsibility to the Tenant in respect of the supply of electricity;
 - 9.6.2. The Landlord shall have the right to, on no less than 60 (sixty) days' written notice to the Tenant, to nominate an alternative electricity supplier or to assume direct responsibility for the procurement of electricity supply to the Leased Premises;
 - 9.6.3. As a result of the electricity supplier's dependence upon Eskom and/or a local authority for the supply of electricity to the Leased Premises, the electricity supplier does not and shall not be deemed to guarantee the availability of electricity supply to the Leased Premises. Accordingly, the electricity supplier shall have no responsibility to procure the supply of electricity to the Leased Premises and/or Building during any scheduled or unscheduled electricity supply failures;
 - 9.6.4. The electricity supplier shall be entitled to recover directly from the Tenant the costs and charges associated with the provision of electricity to the Leased

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Premises in accordance with the electricity supplier's standard terms and conditions, which terms and conditions are incorporated through reference in this Lease Agreement;

- 9.7. The Tenant undertakes to comply with and subscribe to any green-building, water or energy saving initiatives and regulations implemented by the Landlord, Eskom or any other regulating authority.
- 9.8. In the event of a scheduled or unscheduled electricity supply failure to the Leased Premises, the Tenant shall be solely responsible for the emergency back-up supply of electricity to the Leased Premises.
- 9.9. Notwithstanding any provision to the contrary in this Lease Agreement and throughout the duration of this Lease Agreement, the Landlord shall be entitled, at the Landlord's sole discretion, to install a pre-paid electricity system ("the Pre-Paid System") at or in the Leased Premises. In the event that the Landlord elects to install a Pre-Paid System, then on the installation of the Pre-Paid System, the Tenant shall be required to obtain the supply of electricity in respect of the Pre-Paid System from the relevant service provider or local authority. In such event, the Tenant shall ensure, and it is a material term that it obtains and maintains a sufficient credit balance in respect of this Pre-Paid System as and when required by the Tenant in order to conduct its business from the Leased Premises. The Landlord shall pay for all of the costs associated with the installation of the Pre-Paid System on presentation of an invoice unless the Tenant is in breach of any obligations in terms of the Lease, in which such event, the Pre-Paid System shall be for the Tenant's account.

10. USE OF THE LEASED PREMISES

- 10.1. The Tenant shall not use the Leased Premises for any purpose other than for the purpose set out in Item 15 of the Schedule without the Landlord's prior written consent. The use of the Leased Premises for any other use than that described in Item 15 of the Schedule shall constitute a material breach of this Lease Agreement. The Landlord does not warrant that any other premises in the Building or Property shall not be let for any of the purposes set out in Item 15 of the Schedule to any person, or that any other Tenant in the Property or Building shall not compete with any businesses of the Tenant.
- 10.2. Where the Leased Premises are let for a specific purpose or for an intended purpose, the Landlord shall be under no obligation to take any legal action against any person or other tenant in the property or building that competes with the business of the Tenant.
- 10.3. The Landlord does not warrant that the Leased Premises are fit for the purposes for which they are let or that the Tenant will be granted a license in respect of the Leased Premises for the conduct of the business of the Tenant or that any license granted will be renewed. There shall be no liability on the Landlord to do any work or make any alterations or repairs to the Leased Premises to comply with the requirements of any relevant authority.
- 10.4. The Landlord shall have the right to locate, or relocate as the case may be service mains and other facilities within the Leased Premises when required in terms of any by-law or regulation or when in the opinion of the Landlord's architect (which shall be final and binding on the parties), this is dictated by requirements of engineering design or good practice or both. Service mains will be located so as to cause minimum interference with the Tenant and will be unobtrusive in appearance if reasonably possible.
- 10.5. The Tenant shall not allow or cause to be allowed any obstruction or interference to the use by others of the common Property which is attributable directly or indirectly to the manner in which the Tenant makes use of the Leased Premises.

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- 10.6. The Tenant shall not bring into, or place any safe or other heavy article in, the Leased Premises or permit the loading of any floor, wall or ceiling of the Leased Premises over and above such limits as may be specified by the Landlord from time to time.
- 10.7. The Tenant shall not hold or permit the holding of sales by public auction in or upon the Leased Premises without the Landlord's prior written consent.
- 10.8. The Tenant shall not conduct any trade or display any of its goods or products or similar items outside the Leased Premises without the Landlord's prior written consent. The Tenant hereby consents to the removal by the Landlord or its agents, at the Tenant's expense, of any goods or products traded or used for trading in breach of the provisions of this clause.
- 10.9. The Tenant shall ensure that no part of the Leased Premises is used as residential or overnight accommodation at any time during the currency of this Lease Agreement or any renewal or extension thereof.

11. SUBLETTING, TRANSFER OF OWNERSHIP AND CESSION

- 11.1. The Tenant shall not cede or assign or mortgage or pledge any of its rights under this Lease Agreement nor allow anyone else to occupy the Leased Premises or any part thereof on any conditions whatsoever or for any reason whatsoever.
- 11.2. The Tenant shall not sublet the Leased Premises or any part thereof without the Landlord's prior written consent which consent shall not be withheld or unreasonably delayed.
- 11.3. If the Tenant is a company whose shares are not listed on a recognised Stock Exchange, no shares therein shall be transferred from its present shareholders, nor may any shares be beneficially allotted to any persons other than such shareholders without the Landlord's prior written consent which, in the case of an allotment or transfer of shares shall still leave control of the Tenant with the beneficial shareholders as at the commencement of this Lease Agreement or of a transfer of shares to a deceased shareholder's heirs, shall not be unreasonably withheld. Any transfer or allotment of shares affected, without such consent, which consent shall not be unreasonably withheld, shall constitute a breach of the terms of this Lease Agreement by the Tenant. For the purpose hereof, a change of ownership of shares even if not accompanied by a transfer of such shares shall be deemed to be a transfer of shares.
- 11.4. If the Tenant is a close corporation no member's interest therein shall be transferred from its present members to any other persons other than such members without the Landlord's prior written consent which, in the case of a transfer of interest shall still leave control of the Tenant with the beneficial members as at the commencement of this Lease Agreement or of a transfer of interest to a deceased member's heirs, shall not be unreasonably withheld. Any transfer of member's interest affected without such consent shall constitute a breach of this Lease Agreement by the Tenant. For the purposes hereof a change of beneficial ownership of member's interest even if not accompanied by a transfer of such member's interest shall be deemed to be a transfer of member's interest.
- 11.5. The Tenant shall not be entitled to sell its business conducted from the Leased Premises without the prior written consent of the Landlord, which consent shall be granted in the sole and absolute discretion of the Landlord and on conditions determined by the Landlord at the time.
- 11.6. Should the Tenant anticipate the possible sale of its business or any portion thereof and prior to entering into or concluding any agreement with a potential purchaser, the Tenant shall notify the Landlord in writing, which notice shall contain the following minimum information:

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- 11.6.1 the name and ID number of the potential purchaser;
 - 11.6.2 the name and registration number of the proposed purchaser in the event of it being a juristic person;
 - 11.6.3 the proposed sureties and their ID numbers;
 - 11.6.4 the experience, curriculum vitae and resumé of the potential purchaser of any individuals that will conduct the business;
 - 11.6.5 the amount of Tenant installation allowances that was granted to the Tenant by the Landlord;
 - 11.6.6 a copy of the proposed Agreement of Sale.
- 11.7 In the event of a sale of business or a change in control in the event of a transfer of shares or transfer of members' interest, the surety(ies) to this Lease Agreement shall remain liable, and where necessary shall be re-signed to record their liability for the duration of the unexpired portion of this Lease Agreement, despite and notwithstanding an approval of the sale of the business or the change in control.

12. ADVERTISING AND SIGNS

- 12.1. The Tenant shall not be entitled to affix, paint, erect, install or display any advertising or other signs (including neon signs) on the windows, doors, shopfronts, exterior or roof of the Leased Premises or the Building, or anywhere else on the Property without the Landlord's prior written consent. When applying for such consent the Tenant shall submit to the Landlord, in duplicate, plans drawn to scale of each sign or advertisement together with all relevant information relating thereto including, *inter alia*, details of the size and depth of letters to be used, the materials to be used, and the method of manufacture, illumination and attachment to, or suspension from, the Leased Premises or the Building. The Landlord shall have the right to refuse such consent should the Landlord deem in its sole discretion that any aspect of the sign or advertisement is not in keeping with the Landlord's signage requirements or with the general signage or aesthetics of the Building. In the event of such consent being granted, then the Tenant shall –
- 12.1.1. keep and maintain any such signs in good, clean and proper working order and condition and comply with the requirements of any competent authority pertaining to such signs. Should the Tenant fail to do so the Landlord shall be entitled, after giving the Tenant 14 (fourteen) days' written notice, to attend to the maintenance of the signs or compliance with the requirements of any competent authority in such manner as the Landlord deems necessary and to recover the costs of so doing from the Tenant on demand;
 - 12.1.2. indemnify the Landlord against all claims of whatsoever nature made against the Landlord as a result of the installation, erection or operation of such signs.
 - 12.1.3. ensure that signage (of what-so-ever nature) is in accordance at all time with the Landlord's prescribed design criteria contained in Annexure I.
- 12.2. The Tenant shall, by no later than the Termination Date remove all signs affixed, painted, placed displayed, erected or installed by it with or without the Landlord's written consent and make good at its own cost any damage caused as a result of such removal. Should the Tenant fail to so remove all signs or make good any such damage, the Landlord shall be entitled to do so and to recover the costs thereof from the Tenant.
- 12.3. The Tenant shall not affix any poster, placards or notices to the external aspects/faces, windows, doors or walls of the Leased Premises or anywhere else on the Building, or the Property, without the Landlord's prior written consent.
- 12.4. The Tenant will be responsible for all costs levied by any local or other responsible authority in respect of the Tenant's signage on the exterior of the Building or anywhere

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else on the Property. If the signage relates exclusively to the Leased Premises, the Tenant shall be liable to pay to the Landlord the full amount thereof. If such signage does not relate exclusively to the Leased Premises, the Tenant shall be liable to pay to the Landlord a *pro-rata* contribution in respect thereof in terms of Item 11 of the Schedule.

13. INSURANCE

13.1. The Landlord shall insure the Building against all standard risks.

13.2. The Tenant shall not do or omit to do anything or keep in or on the Leased Premises anything or allow anything to be done or kept in or on the Leased Premises which in terms of any fire insurance policy held from time to time by the Landlord in respect of the Building and/or the Leased Premises may not be done or kept therein, or which may render any such policy void or voidable and the Tenant shall comply in all respects with the terms of any such policy provided that if any premium and/or excess payable in respect of any such policy is increased –

13.2.1. by reason of the nature or scope of the business which the Tenant carries on in the Leased Premises in terms of this Lease Agreement; or

13.2.2. as a result of the Tenant not complying with the aforesaid provisions;

then, without prejudice to any other rights, which the Landlord may have as a result thereof, the Tenant shall on demand refund to the Landlord the amount of that additional premium and/or excess.

13.3. The Tenant shall be obliged at its cost to take out and keep in force during this Lease Agreement a public liability insurance policy for such amount as will provide indemnity in respect of all claims which may foresee ably be made against the Tenant arising out of its business in the Leased Premises. Should there be any dispute between the parties as to the amount of the insurance or the terms and conditions of the policy, such dispute shall be referred to the Landlord's auditor for its decision, which shall be final and binding on the parties.

13.4. The Tenant shall be responsible for any glass, both internal and external, mirrors and window panels in or on the Leased Premises and shall be obliged at its expense to replace any such glass, mirrors or window panels as may be damaged however and by whomsoever such damage shall be caused. Without prejudice to and without absolving it from its aforesaid obligations, the Tenant shall, except for any period during which the Landlord may elect to do so, insure glass and window panels against damage and maintain the insurance in force throughout its occupation of the Leased Premises. The Tenant shall on demand by the Landlord cede the policy of insurance to the Landlord as security for its obligations hereunder.

13.5. The Tenant shall be responsible for any loss or damage suffered from any cause whatsoever and which, without derogating from the generally hereof, shall include damage or loss to its stock, fixtures, fittings, equipment, alterations and or additions carried out to the Leased Premises, including electrical and mechanical services/installations, and for the reinstatement thereof at its expense. The Tenant is obliged to arrange appropriate insurance cover for such losses or damage.

14. CONTRAVENTION OF LAWS

- 14.1. The Tenant shall comply with all laws, by-laws and regulations relating to occupiers of business premises for the conduct of any business carried on in the premises, including but not limited to obtaining an occupation certificate from the local authority at its costs. The Tenant shall not contravene or permit the contravention of any of the conditions of title under which the property is held by the Landlord or any of the provisions of the town planning or similar scheme applicable to the Property and not to do or permit to be done in or about the Premises anything which may be or cause a nuisance or disturbance to other occupants of the building or occupiers of neighbouring premises. Nothing in this Agreement shall entitle any Tenant or person or other party to oblige the Landlord to take action in terms of this clause, nor shall any Tenant or person or other party derive any rights from the provisions of this clause.
- 14.2. If the Tenant is a restaurant or fastfood outlet, the Tenant will install and maintain an extraction system in the food preparation area with filters and shall maintain these filters, to reduce odours and smoke to minimum, together with a grease trap or similar equipment leading to the drainage in the premises and the Landlord will have the right to order the Tenant, at the Tenant's cost, to change any system to meet the requirement of any authority, including but not limited to the Department of Agriculture, Conservation and Environment.
- 14.3. The Tenant shall ensure that all activities on the premises comply in respect of the Occupational, Health and Safety Act, No. 85 of 1993, as amended (or its successor) and the regulations issued thereunder.
- 14.4. The Tenant shall not contravene or allow the contravention of the Tobacco Products Control Act, No. 83 of 1993 (including regulations thereunder) by members of its staff or any person on the premises. The Tenant further indemnifies and holds the Landlord harmless against any penalty imposed by any local-, provincial-, national or other authority as a result of the Tenant's failure to comply with the provisions of such Act and the regulations.
- 14.5. The Tenant shall not contravene or permit the contravention of –
- 14.5.1. the conditions of the title deeds relating to, or
 - 14.5.2. any law, by-law or statutory regulation which the Landlord is required to observe in respect of the Building and/or Property.

15. ALTERATIONS AND ADDITIONS TO PREMISES

- 15.1. The Tenant shall not without the prior written consent of the Landlord make any alterations or additions to the Leased Premises, the Building or the roof thereof, nor shall the Tenant in any way interfere or tamper with any part of the Building, the Leased Premises, or the utility service systems or fixtures and fittings thereof.
- 15.2. ~~It is expressly recorded that the Tenant shall have no claim of whatsoever nature for any alterations or additions effected by the Tenant to the Leased Premises, whether such improvements were effected with or without the Landlord's consent. The Tenant furthermore hereby expressly waives and abandons any improvement lien that it may have in respect of any alterations or additions made to the Leased Premises and expressly acknowledges that it shall have no right to occupy the Leased Premises pending the outcome of any legal or other dispute that may arise between the parties in respect of any alleged improvement lien. However, the Tenant shall be liable to reimburse the Landlord on demand for any and all costs incurred by the Landlord in having such improvements or alterations removed and the Leased Premises reinstated on behalf of the Tenant.~~

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15.3. Any alterations or additions effected by the Tenant (for which the Landlord's consent shall be required), including the installation of any signage or shopfronts in the Leased Premises or the Building shall be carried out in accordance with the Landlord's design criteria from time to time determined or introduced by the Landlord, shall be known as "the Tenant's work", and shall further be done in accordance with the following conditions –

- 15.3.1. All Tenant's work shall be carried out by and at the Tenant's expense, and shall be executed, where applicable, by consultants, contractors and sub-contractors approved by the Landlord in writing, which consultants, contractors and sub-contractors shall comply with such reasonable rules and regulations as to safety, administration and co-ordination as the Landlord may stipulate.
- 15.3.2. All the said contractors and sub-contractors and suppliers shall give and shall be deemed to have been given a complete waiver of any liens to which they may be entitled.
- 15.3.3. In the event that the Tenant's and Landlord's consultants, contractors and subcontractors are required to work in conjunction with one another, then, in the further event of a conflict or dispute between them arising, the Tenant shall immediately remove its consultants, contractors and sub-contractors from the Leased Premises and the Building to the extent necessary so as to remove and/or end the conflict or dispute.
- 15.3.4. The Tenant shall keep and maintain at its own cost all Tenant's work in good order and condition including keeping the Leased Premises and/or Property clean and tidy by regular removal of rubble, debris and the like and the Tenant shall be liable to pay to the Landlord any additional local authority and/or utility charges of whatsoever nature and/or insurance premiums and/or excess levied or charged as a result of the said Tenant's work.
- 15.3.5. The Tenant shall not make any alterations to any installations, including but not limited to the electrical and air-conditioning installations on the Leased Premises, unless such related design and work is carried out by professional consultants and contractors. The Tenant shall ensure that on completion of the electrical installation that an electrical certificate of compliance is issued by the electrical contractor and copied to the Landlord. The Tenant shall also be solely responsible for obtaining an Occupation Certificate from the local authority for the Tenant's Leased Premises and the costs incidental thereto. The Tenant shall submit the aforesaid certificate to the Landlord upon receipt of same.
- 15.3.6. The proposed scope of work plans and specifications shall be required to be approved by the Landlord in writing prior to the commencement of any of the Tenant's work.
- 15.3.7. All plans and any other documentation required by the Landlord and/or any competent authority shall be required to be submitted by the Tenant to and approved by the relevant competent authority, including the relevant local authority prior to the commencement of any work of the Tenant's work, which submissions shall be for the Tenant's sole cost.
- 15.3.8. The Tenant's contractor shall be required to hold appropriate insurance cover in respect of contractors' all risks, SASRIA and public liability insurance, copies of which policies shall be required to be furnished to the Landlord on request.

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- 15.3.9. The Tenant indemnifies the Landlord and its agents against any claims proceedings, damages, costs and expenses arising from the Tenant's work.
 - 15.3.10. The Tenant shall make good timeously and physical loss or damage to the Leased Premises or Building, which shall include removing therefrom all debris resulting from the Tenant's work.
 - 15.3.11. The Tenant shall comply with any guidelines by the Landlord or its agent in relation to such work and the orderly management of the works at the Leased Premises, especially where the Building is occupied by other tenants and/or occupants and/or open to the general public or visitors, failing which the Landlord reserves the right to suspend all on-site work until the Tenant demonstrates, to the satisfaction of the Landlord, that orderly management will be restored to the Tenant's work.
- 15.4. Should the Landlord elect or agree to cause its contractors and sub-contractors to do the Tenant's work on the Tenant's behalf and at the Tenant's expense, a certificate signed by a duly authorized representative of the Landlord, reflecting the cost of such work, which cost shall include the fees and disbursements of any professional consultants appointed by the Landlord to supervise the work, shall be final and binding on the Tenant, if legally permissible, alternatively constitute proof at first glance (*prime facie* proof) and shall be paid by the Tenant on demand within 7 (seven) days of presentation of the certificate referred to above.
- 15.5. If consent is given by the Landlord in terms of 15.1 of this clause, then during the currency of this Lease Agreement or any extension thereof such alterations or additions shall not be removed or altered by the Tenant, and upon the termination of this Lease Agreement –
- 15.5.1. the Tenant shall remove such alterations or additions, at its cost, within 3 (three) days before the Termination Date of this Lease Agreement, whether by expiration or earlier termination of this Lease Agreement, if so required by the Landlord, provided that any damage caused to the Leased Premises as a result of any such removal shall be made good by the Tenant, at its cost.
 - 15.5.2. Should the Tenant fail to effect such removal or make good such damage, such alteration or addition shall become the Property of the Landlord, at no cost to the Landlord, and
 - 15.5.3. the Landlord shall be entitled to make good such damage and recover the costs thereof from the Tenant. A certificate by the Landlord's quantity surveyor shall constitute proof at first glance (*prima facie* proof) of the costs of such reinstatement.
- 15.6. In the event of any dispute arising as to whether any alteration or addition is structural, non-structural or merely a fixture or fitting, a certificate of the Landlord's architect shall be final and binding on both the Landlord and the Tenant and if not legally permissible shall constitute proof at first glance (*prime facie* proof).
- 15.7. If the Tenant effects any alterations or additions to the Building or the Leased Premises without the Landlord's prior written consent or if they do not comply with the provisions of clause 15.3, the Landlord shall be entitled to instruct the Tenant to remove such alterations at any time during the period of the Lease Agreement or exercise its rights in terms of 15.5.2 and 15.5.3 of this clause.
- 15.8. If the Tenant is obliged by the Landlord to remove any alterations or additions, fixtures, fittings or equipment and reinstate the Leased Premises after the termination, of this Lease Agreement, then the Tenant shall be liable to continue to pay the rent which was payable immediately before such termination, and shall be bound by all other provisions in terms of this Lease Agreement until such Leased Premises is reinstated and for such

further damages as may accrue to the Landlord arising therefrom. The Landlord shall, notwithstanding this provision, be entitled to take the necessary action in protection of its rights and interest in respect of the Leased Premises which shall include but not be limited to the reinstatement of the Leased Premises as recorded in 16.2 below.

16. FIXTURES, FITTINGS AND EQUIPMENT

The Tenant shall, with the Landlord's prior written consent, be entitled from time to time to install in the Leased Premises, such fixtures, fittings and equipment (excluding air conditioning units) as may be required or necessary for the carrying on of the Tenant's business, and provided that such installations shall be –

- 16.1. in keeping with the general finish of the Building and with the design criteria set or instructed by the Landlord from time to time; and
- 16.2. removed by the Tenant, in accordance with clause 15.5, above with the necessary changes having been made (*mutatis mutandis*).

17. AIR CONDITIONING AND ELECTRICAL INSTALLATIONS INCLUDING INSTALLATION OF STANDBY ELECTRICITY GENERATING DEVICES BY THE TENANT

- 17.1. The Tenant shall not be entitled to install any air conditioning units in or about the Leased Premises without the prior written consent of the Landlord.
- 17.2. Subject to clause 17.4 below, the Tenant shall not change or interfere with the electrical or air conditioning installations in the Leased Premises or the Building without the prior written consent of the Landlord. The Tenant shall be obliged to obtain an Electrical Compliance Certificate at its cost, covering any alterations made by the Tenant to the electrical installation in the Leased Premises during the term of this Lease Agreement and is to provide a copy thereof to the Landlord.
- 17.3. The Tenant shall not be entitled to install in the Leased Premises any electric computers or electrical installations or appliances, not amounting to normal accounting and business machines, without the prior written consent of the Landlord.
- 17.4. Without derogating from the generality of clause 19.1.1 the Tenant shall at all times and at its own cost maintain and keep in good working order and condition all dedicated air-conditioning units serving the Leased Premises. The Tenant shall, if called upon to do so, exhibit to the Landlord the maintenance contract in respect thereof.
- 17.5. On expiry or early termination of this Lease Agreement for any reason and in the event that electrical or other alterations have been made to the Leased Premises, the Tenant shall at its cost (including the cost of work to be performed to obtain any Electrical Compliance Certificate) furnish to the Landlord, as part of its reinstatement commitments in terms of the Lease Agreement an up to date Electrical Compliance Certificate as referred to above.
- 17.6. The Tenant shall acquaint itself with the rates and billings associated with any electrical installation.
- 17.7. Should the Tenant wish to install an engine driven or any other form of standby equipment for the supply of electricity to the Leased Premises, the following conditions shall apply –
 - 17.7.1. The Landlord's prior written consent shall be obtained.
 - 17.7.2. Unless otherwise agreed to in writing by the parties, the Tenant shall enter into a separate agreement with the Landlord's nominated specialist for the

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supply installation, maintenance and final removal of the equipment, on terms and conditions (with particular reference to appropriate insurance cover to be arranged) acceptable to all parties in order to ensure that the installation complies with all safety and other applicable laws, regulations and by-laws.

- 17.7.3. Without prejudice to any rights of the Landlord, at law or in terms of this Lease Agreement, the Tenant indemnifies the Landlord against all actual or contingent losses, liabilities, damages, costs (including legal costs on the scale as between attorney and own client and any additional legal costs) expenses and claims of any nature whatsoever which the Tenant may incur or which are brought against the Landlord as a result of or in connection with the installation, maintenance operation and eventual removal of the standby equipment.

- 17.8 The Landlord shall be entitled to refuse consent for the installation of electrical appliances, machinery, airconditioning and the like electrical equipment, which the Tenant requires to be installed after commencement date if in the sole discretion and opinion of the Landlord or the Landlord's quantity surveyor or architect, such installations will burden or place the electrical supply to the buildings or property at risk concerning the available electricity supply to the property.

18. MAINTENANCE BY THE LANDLORD

The Landlord shall keep and maintain in good order, condition and repair during the currency of this Lease Agreement or any renewal or extension thereof the roof and exterior of the Leased Premises excluding the Tenant's external signage, including the common areas.

19. MAINTENANCE OF THE LEASED PREMISES

- 19.1. The Tenant shall at its own cost –

- 19.1.1. keep and maintain in good order and condition the Leased Premises and shall repair, or replace as the case may be, all aspects of the Leased Premises which, without derogating from the generality hereof, shall include the appurtenances as well any dedicated air-conditioning units exclusively serving the Leased Premises in strict accordance with the manufacturer's instructions, and on termination of this Lease Agreement shall deliver the same to the Landlord in good order and condition, including repainting the Leased Premises. The Tenant shall upon the written request of the Landlord, provide copies of the air-conditioning maintenance agreement, plus proof of payment of any amounts due to the Landlord.

If there is any dispute between the parties as to the extent of the reinstatement required in terms of this clause, the dispute shall be referred to the Landlord's architect, acting as an expert and not as an arbitrator, whose decision shall be final and binding on the parties;

- 19.1.2. repair any damage caused to the Leased Premises by forcible or attempted forcible entry or otherwise.
- 19.1.3. prevent any blockage of effluent/sewerage or water pipes or drains in or used in connection with the Leased Premises and shall remove at its cost any obstruction or blockage in any sewer, water pipe or drains serving the Leased Premises and, where necessary, repair the sewer, water pipe or drain concerned;

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- 19.1.4. pay for and replace where necessary all fluorescent bulbs, starters, ballasts and incandescent bulbs used in the Leased Premises and shall be responsible to maintain all light fittings in the Leased Premises in proper order and clean condition;
 - 19.1.5. except for normal fixturing purposes, not drive or permit to be driven into the floors, walls or ceiling of the Leased Premises and/or the Building any nails, screws or other instruments or articles, nor in any manner whatsoever do or permit anything to be done that may possibly damage the floors, walls or ceilings or any other portion of the Leased Premises and/or the Building;
 - 19.1.6. ensure that all sprinklers and other fire-prevention equipment in its Leased Premises are maintained in accordance with the requirements of any and all legislation (including local authority requirements) as well in accordance with the requirements of the Tenant's and/or Landlord's insurance policy.
 - 19.1.7. keep and maintain in good order and condition any carpeting in the Leased Premises, and shall, on the expiry or earlier termination of this Lease Agreement, deliver such carpeting to the Landlord in good order and condition, fair wear and tear alone excepted. It is specifically recorded that, for the purpose of this clause, "fair wear and tear" shall not apply to usage of the carpets other than for pedestrian traffic and shall not release the Tenant of its obligation to clean the carpets at regular intervals;
 - 19.1.8. be responsible for the cleaning of the Leased Premises, which shall include but not be restricted to, the removal of all refuse from the Leased Premises to a place in the Building designated by the Landlord and the provision of all soaps, hand towels, toilet paper and the like, should toilet/kitchen facilities form part of the Leased Premises;
 - 19.1.9. be responsible for ensuring compliance with the Electrical Installations Regulations (1992) promulgated under Section 35 of the Machinery and Occupational Safety Act No. 6 of 1983 which was, from 1 January 1994, replaced by the Occupational Health and Safety Act No. 85 of 1993, the said regulations however remaining in force under such new Act.
- 19.2. In the event of the Tenant failing or refusing to maintain or repair the Leased Premises or any part thereof as provided for in terms of this clause and remaining in default for a period of 7 (seven) days after receipt by the Tenant of a written notice calling on the Tenant to rectify such default, then the Landlord shall be entitled to effect the necessary maintenance or repairs and to claim the costs so incurred from the Tenant.

20. OBLIGATIONS OF THE TENANT

20.1. The Tenant shall –

- 20.1.1. at its own cost, and on a daily basis, clean the interior and exterior of its shop front to the full height thereof, and the Tenant's advertising signs inside and outside the Leased Premises and the Building and/or Property, and keep the Leased Premises and all its contents in a clean, orderly and sanitary condition;
- 20.1.2. ensure that the Leased Premises are both adequately stocked with merchandise and properly staffed with personnel, not obscure the shop windows or shopfronts in any way keep the shopfronts well lit until 24h00 daily and ensure that its shopfront displays are in keeping with the good appearance of the rest of the shops in the Building and/or Property;

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- 20.1.3. keep the Leased Premises open continuously for business during the hours specified in Annexure G or as determined for the Building by the Landlord from time to time during the whole period of this Lease Agreement or any renewal thereof subject to the Tenant's right to apply to the Landlord to close the Leased Premises when special occasions or general conditions render it reasonably appropriate to do so.
- 20.1.4. not erect any aerial or other similar device on the roof or exterior walls of the Leased Premises or Building without in each instance obtaining the Landlord's prior written consent. Any aerial, so installed, without such written consent, may be removed by the Landlord without notice at any time;
- 20.1.5. not use any audio or audio-visual equipment in a manner so as to be heard or seen outside the Leased Premises;
- 20.1.6. not interfere with, disconnect or overload the electricity supply to the Leased Premises;
- 20.1.7. at all times ensure that the Leased Premises are free from infestation by vermin and should it be discovered that the Leased Premises are infected with vermin, the Tenant shall be responsible for the payment of the cost of the fumigation or other treatment necessary to eradicate such vermin. On the Tenant giving up occupation of the Leased Premises, the Tenant shall be obliged to ensure that the Leased Premises are free from infestation by vermin and should it be determined that the Leased Premises are infected with vermin the Tenant shall likewise be responsible for the cost of treatment for the extermination and eradication of the vermin and such costs shall be for its Tenant's account. A certificate issued by a recognised registered fumigator or vermin exterminator as to the presence of vermin shall be conclusive and binding on the parties;
- 20.1.8. not do anything, which in the sole opinion of the Landlord, may detract from the appearance of the Leased Premises or of the Building;
- 20.1.9. not display, sell merchandise, allow carts, tables, trestles, chairs, signs, devices or any other objects to be stored or to remain outside the Leased Premises;
- 20.1.10. at all times conduct its labour relations and its relations with its employees and agents in such a manner as to avoid all strikes, picketing and boycotts of, on, or about the Leased Premises, Building or Property;
- 20.1.11. indemnify and hold the Landlord harmless against any protest, picketing, strike, unlawful occupancy, nuisance and disturbance carried out by any employees and/or third party/parties on the Leased Premises and/or in the Building directed to or relating to the Tenant;
- 20.1.12. immediately inform the Landlord in writing of any industrial action and/or process where an order is sought or applied for in terms of which industrial action would be allowed in any location other than the Leased Premises for example on the Property or in the Building. The Tenant shall not wilfully agree to and shall oppose any application in terms of which any industrial action would be allowed in any location other than the Leased Premises for example on the Property or in the Building;
- 20.1.13. undertakes to use its best endeavours to limit the noise levels and nuisance caused by any industrial action by its employees or directed at the Tenant;

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- 20.1.14. be responsible for installing its own telephone and/or data connections in the Leased Premises;
- 20.1.15. ensure that the common areas are not used as eating-places or general resting or smoking places by its employees and shall take reasonable steps to ensure that its invitees in any way do not misuse the common areas;
- 20.1.16. ensure that no unduly loud noise, nuisance or source of annoyance to third parties emanates from the Leased Premises;
- 20.1.17. not permit, nor attach to the walls or ceiling or place on the floor of the Leased Premises any fittings, appurtenances or equipment which shall or might in the Landlord's sole discretion constitute too heavy a load therefore;
- 20.1.18. not bring any corrosive, hazardous, harmful or poisonous material onto the Leased Premises, without the prior consent of the Landlord;
- 20.2. The Tenant agrees to comply with the Landlord's security and fire protection regulations, which may exist in respect of the Building from time to time and undertakes to use its best endeavours to secure compliance therewith by its employees.
- 20.3. If sprinklers are installed in the Leased Premises, the Tenant shall be obliged to comply in all respects with the sprinkler system rules as laid down by the Local Fire Officer from time to time in consequence of the Tenant's use and occupation of the Leased Premises. In addition to the aforesaid, the Tenant shall be liable for any and all damages (including consequential damages), the cost of water drainages in respect of the sprinkler system and the cost of the contractor/s and/or consultant/s associated with the sprinkler system and changes to the internal layout thereof.
- 20.4. The Tenant shall ensure that the décor of the Leased Premises accords with and is maintained at a level which is in keeping with the design criteria set or introduced from time to time by the Landlord for the Building, and if requested by the Landlord, upgrade the décor of the Leased Premises to a level which is keeping with the said criteria. For the purpose of this clause 20.4, the term 'the décor of the Leased Premises' shall include, but shall not be limited to, the shop fronts of the Leased Premises, the signs therein and thereon, the ceiling, lighting and flooring therein, and all the fixtures and fittings therein.
- 20.5. Without derogating from the provisions of clause 30, in the event that the Tenant is in breach of any of the provisions of clause 20.1 for any period exceeding 2 (two) days, then the Tenant shall, without prejudice to any of the Landlord's rights arising from this Lease Agreement, be liable to the Landlord for liquidated damages equal to twice the basic rental payable by the Tenant during the period of the breach, calculated on a *pro rata* basis for the period of the breach.
- 20.6. The Tenant shall, in addition to the above, if food is prepared in the Leased Premises:
 - 20.6.1. at its cost, install and maintain an extraction system in the food preparation area with filters, and shall clean, maintain and service these filters and the entire extraction system to the manufacturer's specification to reduce odours and smoke to a minimum, together with a grease trap or similar equipment leading to the drainage in the Leased Premises. Furthermore, the Landlord will have the right to order the Tenant, at the Tenant's cost, to change any system to meet the requirement of any authority, including but not limited to the Department of Agriculture, Conservation and Environment;
 - 20.6.2. acknowledge that it may be subject to a hygiene inspection similar to the hygiene inspection conducted by the Department of Health at similar outlets at any time or on such intervals as the Landlord may, in order to maintain the

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integrity of the Property and/or Building, determine in its sole discretion by an independent service provider appointed by the Landlord from time to time. The Tenant shall contribute to the cost of the inspections as well as at its own cost carry out in the Leased Premises any remedial work or improvement/s brought to light by such inspection / audit (including but not limited to pest control as stipulated) and failure to do so will constitute a material breach of this Agreement of Lease;

- 20.6.3. A certificate issued by the manager of the independent service provider referred to in clause 20.6.2 above, whose appointment and authority need not be proved, shall constitute *prima facie* proof of the level of health and hygiene in the Leased Premises.

21. LANDLORD'S ACCESS TO THE LEASED PREMISES

The Landlord shall be entitled –

- 21.1. at any and all times during the currency of this Lease Agreement, to effect any such repairs, alterations, improvements and/or additions to the Leased Premises and/or the Building as are required by any competent authority or which the Landlord may in its discretion decide to carry out, (including any maintenance or repair which the Landlord effects in terms of clause 19.2) and for any such purpose to erect scaffolding, hoardings and/or other Building equipment in, at, near or in front of the Leased Premises, as also such devices as may be required by law or which the Landlord's architect may certify to be reasonably necessary for the protection of any person against injury arising out of the Building operations, in such manner as may be reasonably necessary for the purpose of any of the works aforesaid. The Landlord shall further be entitled by itself, its contractors and sub-contractors, its architect, its quantity surveyor, its engineer and all artisans and other workmen engaged on the works, to such rights of access to the Leased Premises as may reasonably be necessary for the purpose aforesaid. The Tenant shall have no claim against the Landlord for compensation, damages or otherwise, by reason of any interference with its tenancy or its enjoyment of the Leased Premises occasioned by any such repairs or Building works as are hereinbefore contemplated, or arising from any failure or interruption in the supply of water and/or electricity and/or steam and/or heating and/or gas and/or other amenities to the Leased Premises, or the temporary cessation or interruption in the operation of any of the lifts, elevators and hoists in the Building as a result thereof. Notwithstanding the aforesaid, the Landlord undertakes –

- 21.1.1. not to unnecessarily or unreasonably interfere with the carrying on of the Tenant's business in the Leased Premises during the carrying out of such repairs and/or Building works, and

- 21.1.2. to carry out the same as quickly as is reasonably possible in the circumstances;

- 21.2. to inspect the Leased Premises for any purpose whatsoever at all reasonable times;

- 21.3. to have the right at any time and notwithstanding anything to the contrary contained or implied in this Lease Agreement, to clean the inside of the windows of the Leased Premises and claim the costs of so doing from the Tenant, but nothing herein contained shall be deemed to oblige the Landlord at any time during the currency of this Lease Agreement or any extension thereof to clean the inside of the said windows of the Leased Premises at all;

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22. NOTIFICATION OF DEFECTS

- 22.1. The Tenant shall notify the Landlord in writing within 7 (seven) days after the Commencement Date of any defects in the Leased Premises particularly in regard to appurtenances. Any dispute that may arise in this connection shall be resolved by the Landlord's architect whose decision shall be final and binding on the parties.
- 22.2. If it has not notified the Landlord as aforesaid, the Landlord shall not be obligated to repair such defects and furthermore the Tenant shall have no claim against the Landlord for any patent defect, which may subsequently be found therein.

23. LIMITATION OF LIABILITY OF LANDLORD

23.1. The Tenant shall –

- 23.1.1. not have any claim of any nature against the Landlord for any loss, damage or injury which the Tenant may directly or indirectly suffer (whether or not such loss, damage or injury is caused through the negligence of the Landlord or the Landlord's servants or employees) by reason of any latent or patent defects in the Leased Premises or Building, or fire in the Leased Premises or Building, or theft from the Leased Premises or by reason of the Leased Premises or the Building or any part thereof being in a defective condition or state of disrepair or any particular repair not being effected by the Landlord timorously or at all, or arising out of an act of God or unforeseen event (*vis major* or *causus fortuitus*) or any other cause either wholly or partly beyond the Landlord's control, or arising out of any act or omission by any other Tenant of the Building, or arising out of a change of the Building's name, its facade, appearance or any other feature thereof, or arising in any manner whatsoever out of the use of the services in the Leased Premises or Building by any person whomsoever, for any purpose whatsoever, or arising from any other cause whatsoever;
- 23.1.2. have no claim of any nature whatsoever whether for damages, remission of rent or otherwise, against the Landlord, for any failure of or interruption in the amenities and services provided by the Landlord and/or any statutory authority and/or the Landlord's agents or contractors to the Leased Premises and/or the Building, notwithstanding the cause of such failure or interruption;
- 23.1.3. not be entitled to withhold or defer payment of any amounts due in terms of this Lease Agreement for any reason whatsoever;
- 23.1.4. under no circumstances have any claim against the Landlord for consequential loss howsoever caused.
- 23.2. It is recorded that the Landlord in its discretion may provide such security services for the Building as it may deem desirable for the interests of the Building as a whole and it is agreed that the Tenant shall not have any claim against the Landlord, whether for damages or any other legal remedy, arising out of such security services. It is further recorded that the Tenant shall be responsible for arranging, at its own cost, any specific security measures, which it may require.
- 23.3. The parties record that, should the Tenant or its agents request assistance from the Landlord or its agents in case of an alleged shop lifting or other alleged crime committed by any party and such assistance is granted (without being obliged to do so), the Tenant hereby indemnifies and holds the Landlord or its agents harmless against any claims resulting from such assistance by the Landlord or its agents.

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The foregoing indemnity only applies to the extent that the Landlord or its Agents do not act unlawful in granting such assistance and such unlawfulness is attributing to such claim.

24. DESTRUCTION

24.1. Should the Leased Premises or any other part of the Building or Property be destroyed or damaged to an extent which prevents the Tenant from having beneficial use of the Leased Premises, then the Tenant shall have no claim of any nature whatsoever against the Landlord as a result thereof, no matter how such destruction or damage has been caused, and the Landlord shall be entitled within 30 (thirty) days after such destruction or damage to determine whether or not this Lease Agreement should be cancelled, and shall notify the Tenant of its decision in writing within such period. Should the Landlord not notify the Tenant of its decision within such period, then, it shall be deemed to have elected to cancel this Lease Agreement. Accordingly-

24.1.1. Should the Landlord elect or be deemed to have elected to cancel this Lease Agreement, then the Tenant shall have no claim of any nature whatsoever against the Landlord as a result of such cancellation, but shall not be liable for any rent from the date of such destruction or damage.

24.1.2. Should the Landlord elect not to cancel this Lease Agreement, then –

24.1.2.1. the Landlord shall reinstate, at its cost, the Leased Premises or the Building, as the case may be, as quickly as is reasonably possible in the circumstances;

24.1.2.2. the Tenant shall not be liable for any rent for so long as it is deprived of enjoyment of the Leased Premises;

24.1.2.3. should the Tenant be given beneficial use from time to time of any part of the Leased Premises, it shall make payment of the rent therefore on a *pro rata* basis;

24.1.2.4. the period of this Lease Agreement shall be extended by the period during which the Tenant is deprived of beneficial use of the whole of the Leased Premises.

24.2. Should any part (but not the whole) of the Leased Premises be destroyed or damaged by any cause whatsoever, then –

24.2.1. this Lease Agreement shall not be cancelled;

24.2.2. the rent payable by the Tenant shall be reduced *pro rata* and to the extent to which the Tenant is deprived of the beneficial use of that part of the Leased Premises;

24.2.3. the Landlord shall repair at its cost the damaged or destroyed portion of the Leased Premises as quickly as is reasonably possible in the circumstances;

24.2.4. the Tenant shall have no claim of any nature whatsoever against the Landlord as a result of the said destruction or damage, no matter how caused.

24.3. Should any dispute arise between the Landlord and the Tenant in regard to the reduced amount of rent payable at any time or from time to time by the Tenant, in terms of sub-clauses 24.1.2.3 or 24.2.2 above, then such dispute shall be referred to the Landlord's

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architect whose decision in regard to such dispute shall be final and binding on the Landlord and the Tenant.

- 24.4. In the event that the total or partial destruction referred to in sub-clauses 24.1 and 24.2 above is caused by any wilful or negligent act or omission of the Tenant, the Tenant shall be liable to the Landlord for the full sum of damages sustained by it as a result of the aforesaid wilful or negligent act or omission, or to the Landlord's insurer under the insurer's right of subrogation.

25. USE OF COMMON AREAS

- 25.1. The common areas shall at all times be subject to the exclusive control and management of the Landlord, and the Landlord shall have the right from time to time to establish, modify and enforce by written notice to the Tenant and/or to Tenants in the Building rules and regulations as the Landlord may prescribe with respect thereto and generally to do or perform such other acts in and to the common areas as in the use of good business judgment the Landlord in its sole discretion shall determine to be advisable with a view to the improvement of the convenience and the use of the common areas by Tenants, their officers, agents, employees and customers.
- 25.2. The Tenant undertakes that it shall not operate or permit to be operated in or about the Leased Premises and/or the common areas, any coin or token operated vending machine or similar device for the sale of any goods, merchandise, beverages, sweets, cigarettes, other commodities or services, nor any scales, pay lockers, amusement devices and machines, without the prior written consent of the Landlord.

26. RE-LETTING OF THE LEASED PREMISES OR SALE OF THE BUILDING

The Landlord shall have the right during the last 6 (six) months of this Lease Agreement to exhibit on the Leased Premises such notices as it may deem desirable for the purpose of letting or otherwise dealing with the Leased Premises and the Tenant shall, during this period, or during the period the Building may be for sale, afford to the Landlord, its authorized representatives, agents or any prospective Tenant the right to inspect the Leased Premises.

27. CHANGE OF OWNERSHIP AND NAME CHANGE

- 27.1. Should the Landlord (or the owner of the Property where the Lessor/Landlord is not the owner in terms of this Agreement) at any time during the currency of this Lease Agreement sell the Property of which the Leased Premises form part, or should any of the holders of the shares in the Landlord sell such of those shares with the result that the purchaser/s thereof acquire/s control of the Landlord, then notwithstanding anything to the contrary elsewhere contained or implied herein, it is specifically agreed that in any of the foregoing circumstances the Tenant shall not be entitled to elect not to be bound to the new Landlord, and that this Lease Agreement shall continue in full force and effect.
- 27.2. In the event of a change of ownership as contemplated in sub-clause 27.1 and notwithstanding any contrary provision contained in this Lease Agreement, the Landlord shall be entitled to terminate this Lease on 12 (twelve) months' written notice to that effect to the Tenant.
- 27.3. The Landlord shall have the right to change the name of the building. The Tenant shall not be liable for any losses or damages suffered by the Tenant from or incidental to such change of name.

28. RE-BUILDING AND RELOCATION

~~28.1. The Landlord may terminate this Lease Agreement or any renewal thereof by giving the Tenant a minimum of 6 (six) months' written notice to such effect in all or any of the following circumstances;~~

~~28.1.1. Should the Landlord or its successors in title wish to demolish the Building or the Leased Premises;~~

~~OR;~~

~~28.1.2. Should the Landlord or its successors in title wish to reconstruct and/or redevelop and/or renovate the Building and/or the Leased Premises.~~

~~28.2. The Landlord, shall however, have the right at any time to commence the reconstruction and/or redevelopment and/or renovation of the Building, other than the Leased Premises, and these operations may proceed while the Tenant is in occupation of the Leased Premises.~~

~~28.3. Notwithstanding the implementation of any work as contemplated in 28.2 above, the Tenant shall have no right to object to such work or to claim any rebate of rental during the period in which the said work may be in progress nor shall the Tenant have any claim for damages of whatsoever nature by reason of the earlier termination of this Lease Agreement as provided for in 28.1.~~

~~28.4. Notwithstanding the foregoing, the Landlord reserves the right at any time to relocate the Tenant from the Leased Premises to any new premises of substantially the same size in the Building. If the Landlord wishes to exercise this right it shall give the Tenant written notice to that effect, specifying:~~

~~28.4.1. the new location proposed for the Leased Premises;~~

~~28.4.2. the date upon which the relocation is to occur, which shall not be earlier than 60 (sixty) days after the Landlord gives the notice.~~

~~28.5. The Tenant shall be entitled, within 14 (fourteen) days after receipt of the Landlord's written notice as aforesaid, to refuse the proposed relocation (with the understanding that no notice from the Tenant within the time period referred to above shall also be deemed as a refusal of the proposed relocation). Should the Tenant accept the relocation, the Tenant shall be relocated in accordance with the notice given to the Tenant by the Landlord.~~

~~28.6. However should the Tenant refuse the proposed relocation, this Lease Agreement shall be terminated after 90 (ninety) days from receipt of the notice from the Landlord referred to clause 28.4 above.~~

~~28.7. The Landlord shall be entitled, irrespective of whether or not it elected to terminate this Lease Agreement in terms of clause 28.1 above or whether it gave the Tenant notice of relocation in terms of clause 28.4 above, at any and all times during the currency of this Lease Agreement to affect any such repairs, alterations, improvements and/or additions to the Leased Premises or the Building and/or erect such further buildings on the Property as the Landlord in its discretion may decide to carry out or erect and for any such purpose erect or cause to be erected scaffolding, hoardings and/or building equipment and also such devices as may be required by law or which the architects may certify to be reasonably necessary for the protection of any person against injury arising out of the building operations in such manner as may be reasonably necessary for the purpose of any of the works aforesaid, in, at, near or in front of the Leased Premises (including any and/or all parking areas, whether reserved, un-reserved, specified or un-specified)~~

~~28.8. The Landlord shall further be entitled by itself, its contractors and sub-contractors, its architects, its quantity surveyors, its engineers and all artisans and all other workman~~

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~~engaged on the works to such rights of access to the Leased Premises, parking areas or any other areas as may be reasonably necessary for the purposes aforesaid.~~

~~28.9. The Landlord shall further be entitled to lead pipes and other services through the Leased Premises should it be necessary to link such pipes or other services with any other premises provided that in doing so that the Landlord does not unduly interfere with the Tenant's beneficial use of the Leased Premises. In exercising its above rights, the Landlord shall use its best endeavours to cause as little interference with the Tenant's beneficial use of the Leased Premises.~~

~~28.10. The Tenant shall have no claim against the Landlord for compensation, damages or otherwise, nor shall the Tenant have any right to remission or withholding of any amounts payable in terms of this Lease Agreement, by reason of any interference with its tenancy or its beneficial use of the Leased Premises occasioned by any such repairs or building works as are herein before contemplated or arising from any failure or interruption in the supply of water and/or electricity and/or heating and/or gas and/or any other amenities to the Leased Premises for the temporary cessation or interruption of the operation of any lifts, elevators and hoists in the Building.~~

~~28.11. It is specifically recorded that the purpose of these provisions, among other things, is to give the Landlord flexibility to control its investment in a competitive market in the Landlord's unfettered discretion.~~

29. ADDRESS FOR SERVICE OF DOCUMENTS AND NOTICES (*DOMICILIUM CITANDI ET EXECUTANDI*)

29.1. The parties choose as their address for service of documents and notices (*domicilia citandi et executandi*) for all purposes under this Lease Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses –

29.1.1. the Landlord: the Landlord's address

29.1.2. the Tenant: the Tenant's address.

29.2. Any notice or communication required or permitted to be given in terms of this Lease Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax or e-mail.

29.3. Either party may by notice to the other party change the physical address chosen as its address for service of documents and notices (*domicilium citandi et executandi*) to another physical address where postal delivery occurs in the Republic of South Africa or its postal address or its telefax number or email address, provided that the change shall become effective on the 7th (seventh) business day from the deemed receipt of the notice by the other party.

29.4. Any notice to a party –

29.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its address for service of documents and notices (*domicilium citandi et executandi*) to which post is delivered shall be deemed to have been received on the 7th (seventh) business day after posting (unless the contrary is proved);

29.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its address for service of documents and notices (*domicilium citandi et executandi*) shall be deemed to have been received on the day of delivery; or

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- 29.4.3. sent by telefax to its chosen telefax number stipulated in clause 29.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved); or
 - 29.4.4. sent by e-mail to its chosen e-mail address stipulated in clause 29.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).
- 29.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address for service of documents and notices (*domicilium citandi et executandi*).

30. BREACH OF THE LEASE

30.1. Should the Tenant –

- 30.1.1. fail to pay any amount due by it in terms of this Lease Agreement on due date; or
- 30.1.2. commit a breach of any other material term of the Lease Agreement and fail to remedy such Lease within 7 (seven) days after receipt by the Landlord or its Agent and/or Attorney to remedy such Lease; or
- 30.1.3. fail to keep the franchise in respect of the Leased Premises, or be interdicted (permanent or temporarily) from conducting business under the name and style of the franchise (if applicable); or
- 30.1.4. commit any act which is unlawful, immoral or which constitutes immoral business practice; or
- 30.1.5. have any judgement in excess of R20 000.00 (twenty thousand rand) taken against it, and fail within 7 (seven) days of its becoming aware thereof either to satisfy same or to take steps (and thereafter actively to pursue such steps) to appeal or set aside such judgement; or
- 30.1.6. remove or allow the removal of any item from the Leased Premises which is the object of and falls under the Landlord's hypothec; or
- 30.1.7. be unable, or fail or admit an inability in writing, to pay its debts as and when they fall due; or
- 30.1.8. make any representation in connection with its financial affairs, which proves in any material respect to have been incorrect or untrue when made; or
- 30.1.9. commit any other breach of any term or condition of this Lease Agreement and fail to remedy that breach within a period of 7 (seven) days after the receipt of written notice to that effect to it by the Landlord (provided that should that breach be one which is not reasonably capable of being remedied within the said period of 7 (seven) days, then the Tenant shall be allowed such additional period as is reasonably required therefor), or
- 30.1.10. breach any of the terms or conditions of this Lease Agreement and thereafter again breach any term or condition of this Lease Agreement (whether the same term or condition or not) within a period of 12 (twelve) months after the earlier breach aforesaid, or

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30.1.11. commit any act of insolvency:

then and in any of such events the Landlord shall, without prejudice to its right to damages or to its right to evict the Tenant from the Leased Premises or to any other claim of any nature whatever that the Landlord may have against the Tenant as a result thereof –

- (i) be entitled to cancel this Lease Agreement, or
- (ii) in the case of sub-clause 30.1.9 above, to remedy such breach and immediately recover the total cost incurred by the Landlord in so doing from the Tenant, or
- (iii) elect that, by virtue of the Tenant's factual occupation of the Leased Premises, thereafter, the Tenant shall continue to be bound for the full period of the Lease Agreement and on the same terms and conditions contained herein, save that the Landlord shall be entitled to terminate the Lease Agreement by giving 1 (one) month's written notice to the Tenant without prejudice to the Landlord's claim for arrears of rent and other charges and damages which it may have suffered by reason of the Tenant's breach of contract.

30.2. While the Tenant remains in occupation of the Leased Premises and irrespective of any dispute between the parties, including, but not being restricted to, a dispute as to the Landlord's right to cancel this Lease Agreement, then –

30.2.1. the Tenant shall continue to pay all amounts due to the Landlord in terms of this Lease Agreement on the due dates;

30.2.2. the Landlord shall be entitled to recover and accept those payments but the acceptance by the Landlord of those payments shall be without prejudice to and shall not in any manner whatsoever affect the Landlord's claim to cancellation of this Lease Agreement or for damages or claim of any other nature whatsoever.

Should the dispute between the Landlord and Tenant be determined in favour of the Landlord, then the payments made to the Landlord in terms of this sub-clause shall be regarded as amounts paid by the Tenant on account of the loss and/or damages sustained by the Landlord as a result of the holding over by the Tenant of the Leased Premises.

30.3. In the event of the Landlord instructing its attorneys to take measures for the enforcement of any of the Landlord's rights under this Lease Agreement, the Tenant shall pay to the Landlord such collection charges, tracing fees and other legal costs, on an attorney and client basis, as shall be lawfully charged by such attorneys to the Landlord, on demand made therefore by the Landlord.

30.4. The Tenant hereby consents in terms of Section 45 of the Magistrate's Courts Act of 1944 (or any similar section in an Act replacing that Act) to the jurisdiction of the Magistrate's Court for the purpose of any proceedings in terms of or incidental to this Lease Agreement, provided that the Landlord, at its option, shall have the right to institute proceedings in any division of the High Court having jurisdiction, and in the event of the Landlord electing to institute proceedings in the High Court, then the costs shall be determined on the scale applicable to the High Court.

30.5. A certificate signed by a director, company secretary, credit manager or internal accountant of the Landlord or the Landlord's quantity surveyor or agent shall be apparent proof of the amount of any indebtedness owing by the Tenant to the Landlord at any time and also of the fact that the due date of payment of the whole or, as the case may be, any portion of that amount has arrived.

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- 30.6. Should the Lease Agreement be cancelled or terminated at any time prior to the expiry date, for any reason whatsoever, the Tenant shall refund to the Landlord a *pro rata* portion of the leasing agent's commission calculated at the ratio that the unexpired period of the Lease Agreement bears to the total period of the Lease Agreement, within 7 (seven) business days of the date of such cancellation or termination.
- 30.7. Should the Tenant remain in occupation of the Leased Premises (with or without the Landlord's consent) and without concluding a written agreement, if applicable, after the Termination Date, the Lease Agreement shall continue on a monthly basis, however, the basic monthly rental (notwithstanding what is recorded elsewhere in this Lease Agreement) shall escalate by 8% (eight percent) compounded, added to the rental payable at the last month of the Lease Agreement term. The foregoing shall be without prejudice to any rights of the Landlord in terms of this Lease Agreement or in law and shall not constitute a tenancy other than on a monthly basis as recorded herein.

31. COSTS

- 31.1. In the event that the Tenant makes payment of the rentals and other charges due to the Landlord, by way of a debit order/cheque, then without prejudice to any of the Landlord's rights, the Tenant shall pay to the Landlord for each and every debit instruction/cheque payment that is dishonoured or returned by the Tenant's bankers, bank charges debited to the Landlord plus an administration fee of 10% (ten percent) of the amount of the rentals and such charges.
- 31.2. On or before the Commencement Date of this Lease Agreement, the Tenant shall pay to the Landlord the amount stipulated in Item 166 of the Schedule.

32. PARKING

- 32.1. Any parking space or spaces in the Building or on the Property, whether designated or undesignated, are accepted by the Tenant on the express condition that the allocation and designation of all parking area/s and bay numbers as well as the hours relevant to such parking shall be in the absolute discretion of the Landlord.
- 32.2. Any parking space or spaces allocated shall be used solely for the parking of a motor vehicle and for no other purpose whatsoever.
- 32.3. The Landlord does not undertake that the local authority or itself shall not levy a charge for such parking.
- 32.4. The Landlord shall at times have the right to control the parking areas in the Building or on the Property and to change the allocation of parking spaces and arrangements or driveways, to restrict parking by Tenants, their officers, agents and employees, to close temporarily all or any portion of the parking areas, to discourage and restrict non-customer parking and generally control and do such acts in regard to the said areas as in the judgement of the Landlord shall be advisable and/or beneficial to the tenants of the Building as a whole and for the improvement, convenience and use thereof by tenants and customers provided that the decisions as to the proper use and control of the parking areas shall be in the sole discretion of the Landlord, who shall in addition, be entitled to make and enforce rules and regulations in regard to the proper operation, maintenance and control of such parking areas and driveways. The Tenant further undertakes that it shall not cause or permit vehicles belonging to, or used by it or its directors, shareholders, principals, employees, contractors, suppliers or servants, to be parked in the customers' or clients' parking areas or driveways, and no obstruction shall be placed, or be permitted to be placed by it or its directors, shareholders, principals, employees, contractors, suppliers or servants in the said driveways which may in any way interfere with their use. If the Tenant, its directors, principals and employees park their cars on any portion of the Property other than the designated parking areas, then the Tenant hereby authorises the

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Landlord and/or its agent to tow away from the Property any of the Tenant's cars and/or to clamp any of the wheels of such cars, or cars belonging to the Tenant's directors, principals or employees at the Tenant's cost and/or to attach violation stickers or notices to such cars.

- 32.5. All parking facilities in the Building or at the Property used by the Tenant, its directors, shareholders, principals, employees, contractors, suppliers or servants shall be used entirely at their own risk, and the Tenant further agrees that it shall have no claim against the Landlord, its servants or agents arising from any cause whatsoever, and the Tenant further indemnifies the Landlord, its servants or agents, arising out of the use by the Tenant, his directors, principals, employees, contractors, suppliers or servants of the parking facilities in the Building and/or Property.
- 32.6. The Tenant, its employees, contractors, suppliers or servants shall not use the parking areas allocated to customers, clients or visitors.
- 32.7. The Tenant shall only have the right to park in the Building during the official parking hours stipulated by the Landlord, unless otherwise agreed to by the Landlord in writing.
- 32.8. If coded cards are required to operate the parking system in the Building, a non-refundable levy shall be payable on each coded card issued. In the event of the cards being lost, a replacement charge per card shall be levied and in the event of the cards not being returned by the Tenant upon it relinquishing the use of the cards, a charge per card shall be levied on each card not returned. These charges shall be subject to increase from time to time. Value Added Tax at the prevailing rate shall be added to the amounts referred to in this clause and shall be payable by the Tenant.
- 32.9. The Landlord shall have the right to formulate parking rules and regulations in the Building from time to time and the Tenant undertakes to comply with such rules and regulations.

33. LOADING ZONES

- 33.1. All loading, delivery and unloading of goods, merchandise, supplies and fixtures to and from the Leased Premises shall be done only at such times, in the areas and through the entrances designated for these purposes by the Landlord from time to time and shall be subject to such rules and regulations as in the discretion of the Landlord are necessary for the proper administration of the Leased Premises, the Building and/or the Property.
- 33.2. The Tenant shall ensure that vehicles driven or used by it or its directors, shareholders, principals, servants, contractors, suppliers or invitees shall not obstruct the free flow of traffic, the entrances or exits of the driveway(s) or the pedestrian entrances to the Building and/or Property or any premises therein.
- 33.3. The Landlord shall be entitled to re-locate loading zones if deemed necessary in the discretion of the Landlord for the proper administration of the building and/or the property.

34. REASONABLENESS OF WITHHOLDING CONSENT

If there is a dispute between the Landlord and the Tenant as to whether the Landlord has unreasonably withheld its consent or approval in any case where this Lease Agreement precludes the Landlord from withholding its consent or approval unreasonably, the onus shall be on the Tenant to prove that the Landlord has withheld its consent or approval unreasonably.

35. LIABILITY OF PARTNERS

If the Tenant is a partnership then by their signature hereof, the individual partners of the Tenant bind themselves, both as a partnership and jointly and severally as individuals, for all the Tenant's obligations to the Landlord under or arising out of this Lease Agreement. Similarly, joint Tenants shall be jointly and severally liable for all their obligations as Tenants under or arising out of this Lease Agreement.

36. NATURAL PERSON

36.1. Where the Tenant is a natural person and where such Tenant dies during the currency of this Lease Agreement or any extension thereof, the Landlord may either –

36.1.1. by giving one (1) calendar month's written notice addressed to estate late of the Tenant and delivered to the *domicilium citandi et executandi* cancel the Lease Agreement and resume possession of the Leased Premises, without prejudice to its claim for arrear rental and costs and other amounts owing hereunder or for damages which may be owing to it in terms of the Lease Agreement;

or

36.1.2. vary the Lease Agreement by making it terminable on one (1) calendar month's written notice addressed to the estate late of the Tenant and delivered to the *domicilium citandi et executandi*.

37. UNITED NATIONS GLOBAL COMPACT PRINCIPLES

37.1. The Parties agree to:

37.1.1. comply, support and respect the protection of internationally proclaimed human rights;

37.1.2. comply with labour laws and fair labour practice;

37.1.3. be sensitive to and avoid any service or product that results from forced, compulsory or child labour;

37.1.4. support a precautionary approach to environmental challenges at the Leased Premises, the Building and Property and to participate in initiatives to promote greater environmental responsibility such as recorded in clause 9.7;

37.1.5. encourage the development and expansion of environmentally friendly technologies and strategies;

37.1.6. comply with all applicable anti-corruption and anti-bribery laws, including the prohibition of the payment of commercial or private bribes which could act as an inducement or a reward for any act or failure to act connected with this Lease Agreement, or any other agreement between any member of the Landlord or Tenant.

38. ARBITRATION

38.1. For the purposes of this clause 38, the term "dispute" will be interpreted in its widest sense and shall include any dispute or difference in connection with or in respect of the conclusion or existence of the Lease, the carrying into effect of this Lease Agreement, the interpretation or application of the provisions of this Lease Agreement, the Parties' respective rights and obligations in terms of and arising out of this Lease Agreement, including also (but not limited in any manner whatsoever) the Landlord's right to evict the

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Tenant, to claim payment of any amounts payable in accordance with the provisions of the Lease Agreement (including any holding-over), the determination of any amounts payable, to claim payment of recoveries, to relocate the Tenant, to terminate this Lease Agreement in case of redevelopment and/or renovation and/or upgrading of the Leased Premises or the building and to effect any alterations or additions to the Leased Premises or the Building, as well as in respect of the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Lease Agreement.

38.2. Any one of the Parties will be entitled to refer a dispute to arbitration in accordance with the provisions of this clause 38.

38.2.1. The referring Party shall notify the non-referring Party of its intention to refer such dispute to arbitration in terms of this clause 38 by notice in writing of its intention to do so ("the arbitration notice").

38.2.2. The arbitration notice must be delivered to the non-referring Party's domicile (address for service of documents and notices). The arbitration shall be before one arbitrator. The arbitration notice shall include the names of three practicing advocates (with no less than 10 (ten) years' experience) proposed for appointment as arbitrator.

38.2.3. The non-referring Party shall have a period of 5 (five) calendar days from delivery of the arbitration notice to elect one of such advocates as arbitrator and to inform the referring Party thereof, alternatively propose 3 (three) practicing advocates with no less than 10 (ten) years' experience for appointment as arbitrator to the referring Party within such period of 5 (five) calendar days.

38.2.4. In the event of the non-referring Party failing to elect one of such advocates as arbitrator and informing the referring Party thereof (as alluded to in clause 38.2.3 above) within such period of 5 (five) calendar days or in the event of the non-referring Party failing to propose three practising advocates within a period of 5 (five) calendar days (as alluded to in clause 38.2.3 above) or in the event of the Parties failing to agree upon the identity of the arbitrator within 3 (three) calendar days from the date on which the non-referring Party proposed its 3 (three) names as alluded to in Clause 38.2.3 above, any one of the Parties will forthwith be entitled to request the Chairman of the Johannesburg Bar to appoint an advocate practising at the Johannesburg Bar (with no less than 10 (ten) years' experience) as arbitrator, and which appointment will be final and binding on the Parties.

38.3. Unless otherwise expressly agreed upon by the Parties in writing:

38.3.1. The arbitration proceedings shall be held in Johannesburg, and shall be conducted in terms of the Summary Procedure Rules of the Association of Arbitrators of Southern African, as amended from time to time, (the "Arbitration Rules") or, in the event of there, at that point in time, no longer being in existence the Association of Arbitrators of Southern Africa, or if no such rules are in existence, the arbitrator will determine and lay down the rules to be applicable to such arbitration.

38.3.2. The arbitration proceedings shall be conducted as expeditiously as possible and on the basis that the arbitration hearing be finalised within 30 (thirty) calendar days from the date of appointment of the arbitrator. As the aforesaid 30 (thirty) calendar days period must be met, the arbitrator will, at the outset, lay down the time periods so as to ensure that such 30 (thirty) calendar days period be met, and which then, in itself, entails that the arbitrator will amend the time periods, provided for in the Arbitration Rules, so as to meet this 30 (thirty) calendar days deadline.

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- 38.3.3. The arbitrator shall make his/her award within 10 (ten) calendar days following the finalisation of the arbitration hearing.
 - 38.3.4. The arbitrator shall be entitled, on the written application of any Party at any time (provided that such Party is then a Party to the proceedings), to be made in a manner acceptable to the arbitrator, to amend the Arbitration Rules or to supplement them in the interests of resolving the dispute effectively, efficiently and economically (provided that no such amendment or supplemental Rule shall operate retrospectively).
 - 38.3.5. The arbitrator shall not be bound by the statutory or common law rules relating to proof and evidence.
 - 38.3.6. The arbitrator shall also make a ruling regarding the costs of the arbitration proceedings.
 - 38.3.7. The decision of the arbitrator shall be final and binding and there shall be no right of appeal (notwithstanding the provisions of the Arbitration Rules).
 - 38.3.8. The arbitrator shall be entitled to determine his/her own jurisdiction and shall be entitled, on his or her own accord (*mero motu*), to raise matters with respective differences taken into account (*mutatis mutandis*) (as if the necessary changes have been made) as if the dispute was heard before a Judge in the High Court.
- 38.4. The provisions of this clause 38 shall prevail to the extent of there being any conflict between the Arbitration Rules and this clause 38.
- 38.5. Subject to the other provisions of this clause 38, the arbitration proceedings contemplated herein shall be held in accordance with the provisions of the Arbitration Act, but in the event of there being any conflict, the provisions of this clause 38 will prevail in so far as legally tenable.
- 38.6. Without detracting from the effect (if any) of any other act taken by any Party which may affect the issue of prescription, the Parties irrevocably agree and acknowledge that the arbitration notice shall interrupt prescription and shall be deemed to constitute the service of a process for the purpose of interrupting prescription in terms of Section 13 of the Prescription Act, No. 68 of 1969 (or, as the case may be, the corresponding provision in any amendment thereto or in any replacement legislation).
- 38.7. Any one of the Parties will be entitled to approach the Court to make the award an order of Court, and this includes that any Party may, on an urgent basis, approach the Court for this purpose and make the award an order of Court, and the Parties waive compliance with time periods and/or notices during or in respect of such process.
- 38.8. Pending finalisation of the arbitration, the normal provisions embodied in this Lease Agreement pertaining to holding-over will apply.
- 38.9. The provisions of this clause 38:
- 38.9.1. constitutes an irrevocable consent by the Parties to the arbitration proceedings provided for herein and none of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause or such proceedings;
 - 38.9.2. are severable from the rest of this Lease Agreement and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of this Lease Agreement for any reason whatsoever.

38.10. Nothing which is contained in this Arbitration clause shall preclude:

- 38.10.1. anyone of the Parties from seeking interim and/or urgent relief (including, but not limited to, an application to attach any items falling under the Landlords' hypothec, an interim interdict interdicting the removal of any items from the Leased Premises or the property of which the Leased Premises form part) from the arbitrator;
- 38.10.2. anyone of the parties from seeking interim and/or urgent relief limited to what is stated hereunder, a rent interdict, rent interdict summons, a summons in respect of a claim for rental, other imposts, holding over, any loss relating to the Leased Premises being occupied, vacant or damaged, an application to attach any items falling under the Landlords' hypothec, an interim interdict interdicting the removal of any items from the Leased Premises or the property of which the Leased Premises form part, a cancellation of this Lease Agreement and/or an eviction from a Court of competent jurisdiction, and insofar as the High Court is approached in respect of any such relief, the parties hereby consent to, insofar as it is legally permissible, the jurisdiction of the South Gauteng High Court.

39. SURETYSHIPS

- ~~39.1 If the Tenant is a juristic person, the Tenant shall procure that the person(s) in Item 7 of the Schedule executes and delivers to the Landlord simultaneously with signature of this Agreement, a Deed of Suretyship as per Annexure "C" attached hereto in terms of which the person(s) binds him/themselves, as the case may be, as surety and co-principal debtor, jointly and severally with all other sureties on behalf of the Tenant in favour of the Landlord for all the obligations of the Tenant in terms of this Agreement, its cancellation or any obligation originating from the occupation of the premises.~~
- ~~39.2 As and when a new director is appointed to the Board of Directors or, as the case may be, any new person becomes a member or a trustee of the Tenant during the currency of this Agreement, the Tenant shall notify the Landlord within 7 (seven) days of such event thereof, which notice shall contain the name and address of the director, member of trustee concerned and the Landlord may then and shall be entitled to require such director, member of trustee to sign a Deed of Suretyship similar to the Deed attached hereto marked Annexure "C".~~
- ~~39.3 If the Tenant is a partnership or any other unincorporated association of persons, all the partners or members, as the case may be, shall sign this Agreement on behalf of the said partnership or association and shall, by their signatures hereto, bind themselves as sureties and co-principal debtors with the Tenant for all its obligations in terms of this Agreement.~~

40. COMPANY TO BE FORMED

If this Lease is entered into by a person(s) acting as a trustee(s) on behalf of a company or close corporation or trust to be formed, then:

- 40.1 The trustee/s personally, jointly and severally warrant(s) to the Landlord that the company or close corporation or trust to be incorporated or formed will, within 60 (sixty) days from the date of this agreement:
 - 40.1.1 be duly formed and incorporated; and
 - 40.1.2 duly adopt, ratify and confirm without modification this agreement; and

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- 40.1.3 take all other steps necessary to render this agreement binding on it; and
- 40.1.4 deliver up its Certificate of Incorporation and Memorandum and Articles of Association in the case of a company, its Founding Statement and Association Agreement (if any) in the case of a close corporation and the Certificate of Appointment of Trustees and Trust Deed in the case of a trust, together with a true copy of the resolution referred to in 40.1.1 duly certified by the chairman of the meeting.
- 40.2 The trustee(s) personally hereby jointly and severally bind themselves to the Landlord that, failing compliance with the provisions of 40.1 hereof, they shall personally be bound by all the obligations and entitled to all the rights of the Tenant in terms and arising out of this Agreement of Lease.
- 40.3 In the event of proper compliance with the provisions of 40.1 hereof, the trustee(s) shall be bound by all the terms of the Deed of Suretyship incorporated herein and signed by them in their personal capacities, but in the event that they shall be personally bound by all the obligations and entitled to all the rights of the Tenant by virtue of non-compliance with the provisions of 40.1 hereof, then the Deed of Suretyship shall be regarded "*pro non scripto*".

41. EMERGENCY ELECTRICITY SYSTEM (IF INSTALLED)

Notwithstanding anything to the contrary contained in this Agreement:

- 41.1 The Tenant acknowledges that the consumption and supply of the Emergency Electricity System will be within the guidelines provided by the Landlord in writing from time to time. The Landlord undertakes to determine such guidelines once the Emergency Electricity System has been installed on the property taking into account among other things (inter alia) the loading required by the Tenant at the time of installation. Failure to comply with the guidelines shall result in immediate termination of the service.
- 41.2 In addition to the rental and other amounts due in terms of the Agreement, the Tenant shall contribute the following towards the Emergency Electricity System once installed on the property:
 - 41.2.1 fixed monthly charge: as recorded in Item 10.9 of the Schedule. The fixed monthly charge is payable monthly in advance on the first day of each calendar month without deduction of set-off;
 - 41.2.2 variable monthly charge: calculated as the Tenant's designated percentage per users of Emergency Electricity System:
 - 41.2.2.1 the costs to administer, operate and run the Emergency Electricity System (among other things the actual diesel and other consumables consumed by the Emergency Electricity System) , which will be invoiced by the Landlord monthly in arrears and payable by the Tenant upon demand (for the avoidance of doubt, calculated as per the designated percentage), OR
 - 41.2.2.2 Should the Landlord install a secondary electricity meter at the Emergency Electricity System it will bill the Tenant according to its consumption (for the avoidance of doubt, calculated as per the designated percentage above) in the event of periodic interruptions and/or failure in the supply of electricity by the relevant local and/or municipal and/or other authority occurs and the Emergency Electricity System supplied such electricity, PLUS

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- 41.2.2.3 the actual cost of maintaining (which shall include but not limited to service charges, costs of parts and the like) of the Emergency Electricity System, which will be invoiced by the Landlord monthly in advance and will be payable by the Tenant upon demand (for the avoidance of doubt, calculated as per the designated percentage).
- 41.2.3 Designated percentage for the purposes of this clause shall mean the rentable area of the Tenant expressed as a percentage to the rentable area of all users of the Emergency Electricity System at any given time.
- 41.3 The Tenant hereby agrees that a Certificate issued by the Landlord and or its Agent will be proof at first glance (prima facie proof) of the Tenant's contribution to Emergency Electricity System as set out in clauses 41.2.1 and 41.2.2 above.
- 41.4 The Tenant's contribution to the Emergency Electricity System shall be paid, monthly in advance on the first day of each calendar month without deduction or set-off into a bank account nominated by the Landlord from time to time. All amounts due and payable in terms hereof shall be paid in accordance with the provisions of this Agreement.
- 41.5 The Tenant hereby acknowledges and agrees that if there is any increase in the Landlord's insurance premium as a result of the acquisition, establishment, installation, operation and maintenance of the Emergency Electricity System, the Tenant shall refund to the Landlord upon demand any increase in such insurance premium. A certificate issued by the Landlord or its Agent from time to time shall be proof at first glance (prima facie proof) the increase in such insurance premium and refund.
- 41.6 The Tenant acknowledges that:
- 41.6.1 the usage of the Emergency Electricity System will among other things, exclude the operation of the air-conditioning unit/s, geyser/s and ventilation system/s in the Leased Premises (without the Landlord having to perform any work in relation thereto or incurring any costs in respect thereof). The Tenant further acknowledges that the Landlord may require possible manual intervention by the Tenant or its employees (i.e. switching off of the airconditioning unit/s, geyser/s and ventilation system/s at the time the system becomes operation). Notwithstanding the foregoing, the Landlord may install and operate an intervention device.
- 41.6.2 should it not contribute towards the Emergency Electricity System as recorded herein, the Tenant will be regarded as a non-participant and be excluded from the supply of emergency electricity.
- 41.7 The Tenant acknowledges that it will be responsible to take steps, at its own cost, to protect its equipment, such as without limitation connecting its computer and related equipment through suitable uninterrupted power supplies ("UPS") or similar devices.
- 41.8 Neither the Tenant nor any of its employees will, for the duration of the Agreement, interfere with or endeavour to make changes to the Emergency Electricity System.
- 41.9 The Tenant will accommodate a complete shut down of electricity supply to enable the Landlord to effect the installation and/or repairs and/or maintenance to the Emergency Electricity System, if required and if such installation and/or repairs and/or maintenance cannot be done after normal business hours. The provisions of this clause shall apply mutatis mutandis to the instance where the local and/or other competent authority requires a shut down or any service provided by such authority.
- 41.10 The Tenant undertakes not to vary the emergency / temporary electricity demand and which the Emergency Electricity System can supply without prior written notice to the Landlord

whereafter the Landlord may decide to include or exclude such additional demand from the emergency/temporary electrical supply in its discretion.

- 41.11 The Landlord shall use its best endeavours to maintain the Emergency Electricity System and ensure that adequate fuel is available (subject to supply) however will not be responsible or liable for any interruption in the supply of emergency / temporary electricity generated by the Emergency Electricity System for whatever reason. The Landlord shall furthermore use its best endeavours to conclude a maintenance contract with a suitably qualified contractor to maintain the Emergency Electricity System and arrange that adequate fuel is available (subject to supply).
- 41.12 Notwithstanding anything contrary to this Agreement, the Tenant shall have no claim of whatsoever nature against the Landlord or its agent and may not cancel the Agreement as a result of or due to equipment failure affected by the periodic power failure and/or load shedding and any surges as a result of the switch to emergency / temporary electricity supplied by the Emergency Electricity System or any interruption due to maintenance or work performed on the Emergency Electricity System and related equipment or the use of such emergency temporary electricity.

42. GENERAL

- 42.1 This Lease Agreement incorporates the entire agreement between the Landlord and the Tenant and no alteration, consensual cancellation or variation hereof shall be of any force or effect unless it is in writing and signed by both the Landlord and the Tenant who hereby acknowledge that no representations or warranties have been made by either the Landlord or the Tenant, nor are there understandings or terms of lease, other than those set out herein.
- 42.2 No relaxation or indulgence which the Landlord may show to the Tenant shall in any way prejudice the Landlord's rights hereunder and, in particular, no acceptance by the Landlord of rent after due date (whether on one or more occasions) nor any other act or omission by the Landlord including, without limitation, the rendering of accounts after due date, shall preclude or stop it from exercising any rights enjoyed by it hereunder by reason of any subsequent payment not being made strictly on due date. Unless otherwise stated by the Landlord in writing, the receipt by the Landlord or its agents of any rent or other payment shall in no way whatsoever prejudice or operate as a waiver, rescission or abandonment of any cancellation or right of cancellation effected or acquired prior to such receipt. The Landlord shall be entitled in its sole discretion to appropriate any amounts received from the Tenant towards the payment of any cause, debt or amount whatsoever owed by the Tenant to the Landlord.
- 42.3 Unless inconsistent with the context or where it is agreed to otherwise, wherever in this Lease Agreement or any annexure thereto provision is made for the furnishing of a certificate or for a decision to be made by the Landlord's architect, quantity surveyor or auditor, then and in such event such architect, quantity surveyor or auditor shall act as an expert and not as an arbitrator.
- 42.4 Should any one or more of the provisions of this Lease Agreement be unenforceable, then the remaining provisions, which are not affected, shall be of full force and effect.
- 42.5 It is recorded that the Landlord has the right in its sole discretion to change the name of the Building on 1 (one) calendar month's written notice to the Tenant.
- 42.6 The Tenant warrants that there are no general or special notarial bonds registered over such of his movable goods as are situated upon the Leased Premises. The Tenant furthermore undertakes that he shall not cause any general or special notarial bonds to be registered over its movable goods which are situated upon the Leased Premises

without the prior written consent of the Landlord, which consent shall not be unreasonably withheld.

- 42.7 The Tenant undertakes by its signature hereunder to provide any and all documentation necessary to the Landlord for the Landlord's compliance with the requirements of the Financial Intelligence Centre Act (number 38 of 2001). In the event that the Tenant fails to provide such documentation (or any aspect thereof), the Tenant hereby indemnifies the Landlord against any and all penalties which the Landlord may suffer as a result of such failure to comply.

43. CONSENT TO CREDIT VERIFICATION

- 43.1 The Tenant irrevocably consents to the Landlord and / or its agents requesting any information available on any credit bureau regarding the Tenant and or its sureties from time to time.
- 43.2 This consent includes (but is not limited to) that the Landlord and/or its agents, as the case may be, may:
- 43.2.1 perform a credit search on the Tenant's and/or sureties credit profiles with more than one registered credit bureau at any time during the currency of this Lease Agreement;
 - 43.2.2 should the Tenant fail to meet its commitments in terms of this Lease Agreement, record the Tenant's non-performance to any credit bureau;
 - 43.2.3 request a report where the Landlord and/or its agents are monitoring the Tenant's payment behaviour by researching the Tenant's profile;
 - 43.2.4 use any new information and data obtained from any registered credit bureau in respect of future applications to Lease Agreement (if applicable);
 - 43.2.5 record the details in respect of the Tenant's account with any registered credit bureau;
 - 43.2.6 record and transmit details of the Tenant's performance in terms of this Lease Agreement and to any registered bureau how the account is conducted by the Tenant in meeting its obligations in terms of this Lease Agreement.
- 43.3 The Landlord will give the Tenant 20 (twenty) business day's written notice prior to forwarding the details as set out above to any registered credit bureau.

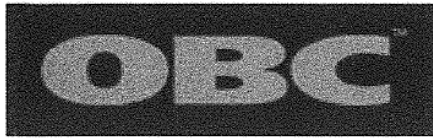
44. TRADING HOURS

- 44.1 The Landlord shall be entitled to determine the hours during which the Tenant shall remain open for trading on weekdays, weekends and public holidays and shall notify the Tenant thereof. The Landlord shall have the right to vary such trading hours from time to time by written notice to the Tenant.
- 44.2 The Tenant shall keep the Leased Premises open for business, fully stocked, during the following Minimum Trading Hours:

STANDARD TERMS AND CONDITIONS

Monday to Friday:	09:00 - 18:00
Saturdays:	09:00 – 17:00
Sunday & Public Holidays:	09:00 - 14:00

- 44.3 This clause is a material term of the Lease Agreement and if the Tenant does not adhere to these hours, the Landlord has the right, notwithstanding its right to terminate this agreement, to charge a penalty amount. The penalty amount will be 10% (ten percent) of the Tenant's gross rental pro rata per hour or part thereof that the Tenant is not open, alternatively R3 000,00 (three thousand rand) excluding VAT per transgression, whichever is the greater.
- 44.4 The Landlord will permit longer trading hours and all of the above trading hours are the Minimum Trading Hours allowed.



**EXTRACT FROM THE MINUTES OF THE MEETING BY DIRECTORS OF OBC
GROUP (PTY) LTD WITH REGISTRATION NO: 2000/022255/07 ("COMPANY")
TAKEN AT MIDRAND ON THIS 22 DAY OF JANUARY 2014**

1. QUORUM OF DIRECTORS PRESENT:

- 1.1 JOHNATHAN ADRIAAN FOURIE
WITH ID: 470902 5026 081
- 1.2 ANTONIO AUGUSTO FERREIRA DA FONSECA
WITH ID: 660130 5059 080

(Hereinafter referred to as the "Directors")

2. THE COMPANY DIRECTORS PRESENT RESOLVE:

- 2.1 That the quorum requirement for the directors to be present to pass a resolutions of the Company is fulfilled in accordance with the company documents and Companies Act 71 of 2008 (hereinafter "the Act");
- 2.2 That the directors of the Company hereby waive any statutory or contractual time limits and requirements for the calling and holding of this meeting in terms of the Act;
- 2.3 That **OBC Group (Pty) Ltd with Registration No: 2000/022255/07** (hereinafter referred to as "OBC") be authorised to enter into following agreements (hereinafter "the OBC agreements"):
 - 2.3.1 Franchise agreements;
 - 2.3.2 Credit applications;



Reg. No. 2000/022255/07 V.A.T No. 4500170958 Directors JA Fourie, AAF Da Fonseca (Managing)

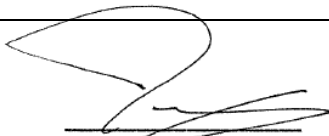
..... OBC GROUP (PTY) LTD.

96 15th Road, Randjespark
Midrand, 1685
0861 OBC OBC (622 622)
www.obcchicken.co.za

A handwritten signature in black ink, appearing to be 'J.A. Fourie', written over a horizontal line.

- 2.3.3 Lease agreements and Rental agreements (including the renewal of agreements thereof);
 - 2.3.4 Sub-lease agreements;
 - 2.3.5 Supply agreements;
 - 2.3.6 Addendums to the abovementioned agreements;
 - 2.3.7 All agreements ancillary to the management and conducting of the business of OBC.
- 2.4 That **Antonio Augusto Ferreira da Fonseca with ID No: 660130 5059 080** is authorised to negotiate, conclude and sign the OBC agreements on behalf of OBC.
- 2.5 That all actions previously taken **Antonio Augusto Ferreira da Fonseca with ID No: 660130 5059 080** regarding the abovementioned agreements be ratified and binding on OBC.

CERTIFIED AS A TRUE
EXTRACT FROM THE
MINUTES OF THE
ABOVEMENTIONED
MEETING



JOHNATHAN ADRIAAN FOURIE
DIRECTOR



ANTONIO AUGUSTO FERREIRA DA FONSECA
DIRECTOR

ANNEXURE C

SITE PLAN AND LAYOUT

