

LEASE AGREEMENT

STIMELA CROSSING

between

ZOVIBLOX (PTY) LTD

Registration No. 2017 / 451 240 / 07

(“the Landlord”)

and

GENERAL AFRICA FOODS (PTY) LTD

Registration No. 2017 / 100 332 / 07

(“the Tenant”)

t/a OBC CHICKEN AND MEAT

SCHEDULE TO THE LEASE AGREEMENT

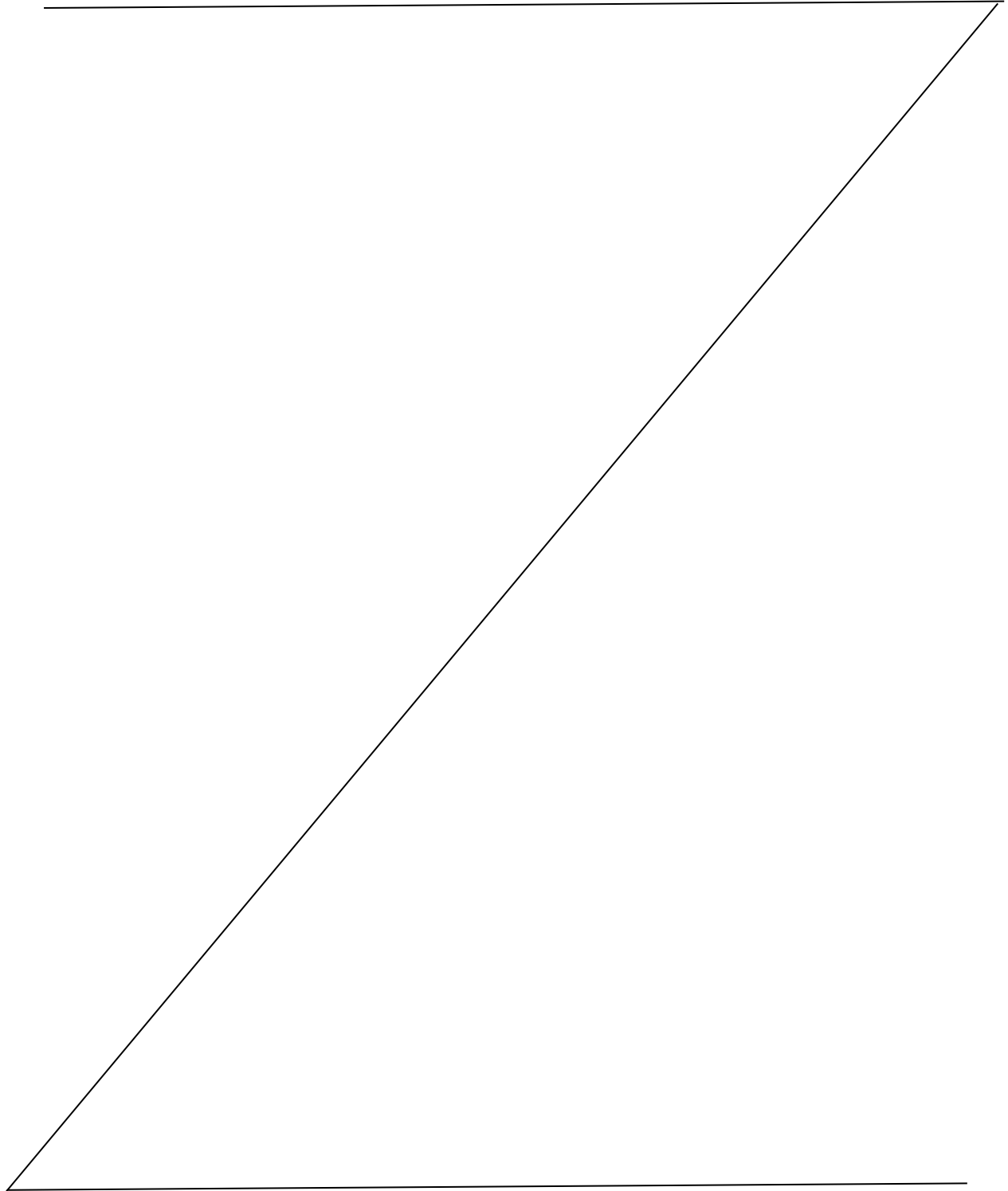
| | | |
|----|--|---|
| 1 | LANDLORD Landlord's Domicilium Address: Accounts Contact Person: | Zoviblox (Pty) Ltd Masingita House, 41 West Street, Houghton, 2198 Khuthadzo Sikhauli Tel: 071 328 5562 E-Mail: Khuthadzo.Sikhauli@cwexcellerate.com |
| 2 | REGISTRATION NUMBER | 2017 / 451 240 / 07 |
| 3 | VAT NUMBER | 464 028 2952 |
| 4 | TENANT | General Africa Foods (Pty) Ltd |
| | Contact Person: | Nuno Xavier |
| | Contact Details: | (011) 214 8474 |
| | E-mail: | XavierN@africanalliance.com |
| 5 | REGISTRATION NUMBER | 2017 / 100 332 / 07 |
| 6 | TRADING AS | OBC Chicken and Meat |
| 7 | VAT NUMBER | 496 0282 368 |
| 8 | PROPERTY | Portion 1 of Erf 3891, Barberton |
| 9 | BUILDING | Stimela Crossing |
| 10 | SITUATED AT | 18 General Street, Barberton, Mpumalanga |
| 11 | TRADING DATE | 24 October 2019 |
| 12 | BENEFICIAL OCCUPATION PERIOD | 60 (sixty) days |
| 13 | LEASE COMMENCEMENT DATE | 01 November 2019 |
| 14 | INITIAL LEASE PERIOD | 5 (five) years |
| 15 | RENEWAL OPTION PERIOD(s) | 1 (one) option of 5 (five) years |
| 16 | LEASED PREMISES (hereunder referred to as the Tenant's <i>domicilium citandi et executandi</i>) | Shop 77, Stimela Crossing, 18 General Street, Barberton, Mpumalanga |
| 17 | PERMITTED USE OF LEASED PREMISES | The Tenant shall be permitted to sell items normally sold within an OBC Chicken and Meat franchise |
| 18 | SIZE OF LEASED PREMISES | 622m ² |
| 19 | GROSS MONTHLY RENTAL | <u>Gross Monthly Rental</u> (exclusive of VAT) 01 Nov 2019 – 31 Oct 2020: R 80 860.00/month 01 Nov 2020 – 31 Oct 2021: R 86 520.20/month 01 Nov 2021 – 31 Oct 2022: R 92 576.61/month 01 Nov 2022 – 31 Oct 2023: R 99 056.98/month |

| | | |
|----|--------------------------|---|
| | | 01 Nov 2023 – 31 Oct 2024: R 105 990.97/month |
| 20 | OTHER CHARGES | <p><u>Other Charges</u></p> <ul style="list-style-type: none"> • <u>Rates and Taxes:</u> The Tenant's pro-rata share of the Rates and Taxes in respect of the property/building plus increases. • <u>Electricity and Water:</u> metered consumption for the Tenant's Account, plus meter reading charges, plus Tenant's Pro-Rata Share for the Common Areas. • <u>Sewerage and other service charges:</u> direct cost for the Leased Premises or the Tenant's Pro-Rata Share. • <u>Refuse Removal:</u> direct costs for the Leased Premises or the Tenant's Pro-Rata Share. • <u>Marketing Fund Contribution:</u> 0% of the gross rental payable by the Tenant. |
| 21 | TURNOVER RENTAL | <ul style="list-style-type: none"> • Applicable from: Payable annually within 90 (Ninety) days after the Tenant's financial year-end • Financial year-end of Tenant, unless specified shall be 28 February • Tenant's turnover rental percentage: N/a • See annexure "H" |
| 22 | AIR CONDITIONING | <ul style="list-style-type: none"> • Repairs, maintenance, water and electricity consumption for air-conditioning units servicing the Leased Premises for Tenant's account, if applicable. • For air conditioning units servicing the whole Building then the Tenant's Pro-Rata Share. |
| 23 | SECURITY | <ul style="list-style-type: none"> • Tenant to secure Leased Premises at its own cost. • Property security as per Tenant's Pro-Rata Share. |
| 24 | LEASE ADMINISTRATION FEE | R 3 500.00 |
| 25 | FIRE FIGHTING EQUIPMENT | <ul style="list-style-type: none"> • Fire Fighting Equipment will be installed by the Landlord as per the Landlord's Specifications and minimum Council requirements for the Leased Premises. • Any additional equipment required by the Tenant |

| | | | |
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| | | due to the nature of the Tenant's business shall be installed and maintained at the Tenant's own cost and expense and after obtaining the Landlord's prior written approval of such installations. | |
| | | <ul style="list-style-type: none">• All equipment regardless of who installs same shall be maintained by the Tenant at its own cost, and returned on termination to the Landlord, fair wear and tear excepted. | |
| 25 | SIGNAGE (if applicable) | For Tenant's account, all signage to be pre-approved by the Landlord in writing | |
| 26 | PARKING (if applicable) | N/a | |
| 27 | ESCALATION RATE | 7 (seven) percent | |
| 28 | DEPOSIT/GUARANTEE REQUIRED | R 226 820.67 | |
| 29 | SURETYSHIPS (supply copies of ID documents and physical address of each surety). Which persons bind themselves jointly and severally with the Tenant in terms of the Suretyship Agreement attached hereto as Annexure G | Full Name ID Number Physical Address | N/a N/a N/a |

Special Conditions:

1. The Landlord shall ensure that the shopping centre, Stimela Crossing, is 75% let at all time.
2. The offer is subject to the Landlord securing an anchor Tenant.



Appendices forming part of the Lease Agreement

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| ANNEXURE B | SITE PLAN OF LEASED PREMISES |
| ANNEXURE C | AREA CERTIFICATE |
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ANNEXURE A - GENERAL TERMS AND CONDITIONS OF LEASE

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1 INTERPRETATION

1.1 In this Agreement, unless the context dictates otherwise, the words and expressions set out below shall bear the following meanings and cognate expressions shall bear corresponding meanings–

- 1.1.1 **“the/this Agreement / the/this Lease / the/this Lease Agreement”** - the agreement set out in the Schedule and Annexures including these General Terms and Conditions of Lease and the appendices, schedules and annexures hereto;
- 1.1.2 **“the Appurtenances”** - all installations and appliances in or on the Premises including all keys, locks, doors, light and light fittings, sewerage pans, basins, water taps, electrical and plumbing installations and air conditioning units and all windows, glass and plate glass, power plug points, control devices, fittings and other equipment on the Premises;
- 1.1.3 **“Architect”** – the Landlord’s architect;
- 1.1.4 **“Beneficial Occupation Date”** - a date as agreed by the Parties from which the Beneficial Occupation Period shall commence for the purpose of fitting out the premises and for the preparation of trade, and from which the Tenant is granted rent free access to the Premises;
- 1.1.5 **“Building”** - the Building in which the Leased Premises are situated as extended and altered, as detailed in the Schedule, together with any parking area forming part thereof erected on the Property;
- 1.1.6 **“Business Day”** - any day other than a Saturday, Sunday or an official public holiday in South Africa;
- 1.1.7 **“the Lease Commencement Date”** - means the Lease Commencement date as detailed in the Schedule, notwithstanding the Signature Date. Should the trading date not fall on the first day of the month the lease commencement date shall be the 1st day of the month following the trading date;
- 1.1.8 **“the Common Areas”** - means those areas of the Property and the Building which do not service or are not reserved for the exclusive use of any single tenant in the Building and which are intended by the Landlord for the common use of all Tenants, their employees and visitors to the Property and shall include all facilities, Appurtenances and improvements thereon;
- 1.1.9 **“Companies Act”** – the Companies Act 71 of 2008;

- 1.1.10 **“the Council”** - any relevant town, municipal, local or other council or body which has jurisdiction over the Property;
- 1.1.11 **“Daily rental”** – the Monthly Rental (excluding Other Charges) multiplied by 12 (twelve) and divided by 365 (three hundred and sixty five);
- 1.1.12 **“Environmental Laws”** - all statutes, by laws or policies relating to the environment or concerning the environmental policy, which are applicable to the Tenant, the Landlord, and/or the Leased Premises and all ordinances and/or regulations and/or proclamations promulgated thereunder;
- 1.1.13 **“the Initial Lease Period”** – means the period stipulated in the Schedule and excludes any Lease Renewal Periods;
- 1.1.14 **“Insolvency Event”** - in relation to the Tenant, the occurrence of any of the following events or circumstances -
- 1.1.14.1 an order or declaration is made, steps are taken, or a meeting of the trustees, directors or shareholders of the Tenant (as applicable) is convened to consider the passing of a resolution, or a resolution is passed or proposed, for the administration, custodianship, curatorship, bankruptcy, liquidation, winding up, or deregistration of it or its estate or for the placement of it under business rescue or supervision or for the appointment of a business rescue practitioner;
 - 1.1.14.2 it is unable (or admits inability) to pay its debts generally as they fall due or it is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with, or for the benefit of, its creditors or a moratorium is agreed or declared in respect of, or affecting, all or a material part of its indebtedness;
 - 1.1.14.3 it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such steps;
 - 1.1.14.4 any receiver, administrative receiver, business rescue practitioner, curator, trustee in bankruptcy, liquidator or the like is appointed in respect of it or any material part of its assets or it requests any such appointment;

- 1.1.14.5 it becomes subject to any of the proceedings contemplated in chapter 6 of the Companies Act including, without limitation, becoming subject to any business rescue, being regarded as financially distressed or subject to supervision all as defined in chapter 6 of the Companies Act;
- 1.1.14.6 it is or becomes insolvent or commits any act which, if it were a natural person who is subject thereto, would be an act of insolvency as described in the Insolvency Act, No. 24 of 1936 or any equivalent legislation in any jurisdiction to which such person is subject; or
- 1.1.14.7 any order, whether provisional or final, is granted for its liquidation, dissolution or winding up or for it to be placed under judicial management, business rescue proceedings or any other equivalent proceedings, whether provisional or final;
- 1.1.14.8 it is deemed to be unable to pay its debts in terms of section 345 of the Companies Act 61 of 1973;
- 1.1.14.9 it compromises or attempts to compromise with, or defers or attempts to defer payment of debts owing by it to its creditors generally;
- 1.1.14.10 it suspends payment of all or a material part of (or of a particular type) of its indebtedness to its creditors and/or commences negotiations or the taking of any other step with a view to the deferral, rescheduling or other readjustment of all of (or all of a particular type of) its indebtedness to its creditors and/or it proposes or makes a general assignment or arrangement or composition with or for the benefit of its creditors and/or it agrees or declares a moratorium in respect of or affecting all or a part of its indebtedness;
- 1.1.14.11 it has any execution, attachment or other proceedings levied or enforced against its assets, unless an application to rescind the relevant execution or attachment order is successfully brought by the Tenant within fifteen days of having become aware of the relevant execution, attachment or other similar order; or
- 1.1.14.12 any event occurring or circumstance arising which is analogous to any of the events referred to in 1.1.14.1 to 1.1.14.5 (both clauses inclusive);
- 1.1.15 **“the Leased Premises”** - means the premises leased by the Landlord to the Tenant in terms of this Agreement and as more fully detailed in the Schedule and Annexure B hereto;

- 1.1.16 **“Lease Period”** - the Initial Lease Period and each Renewal Period thereafter until this Agreement terminates in its entirety;
- 1.1.17 **“Lease Year”** - each successive 12 month period during the term of the Lease, the first of which shall commence on the Commencement Date;
- 1.1.18 **“the Tenant”** – the legal entity whose details are set out as such in the Schedule;
- 1.1.19 **“the Tenant’s Pro Rata Share”** –
- 1.1.19.1 in respect of any amount relating only to the Leased Premises, the entire amount thereof;
- 1.1.19.2 in respect of any amount relating not only to the Leased Premises but to the entire Building or Property, the same percentage thereof as the Rentable Area of the Leased Premises bears to the rentable area of the entire Building at the date it is payable;
- 1.1.20 **“the Landlord”** – the legal entity whose details are set out as such in the Schedule and its successors in title or assign;
- 1.1.21 **“Monthly Rental”** – the gross monthly rental as set out in Section 19 of the Schedule and excluding Other Charges;
- 1.1.22 **“the Offer to Lease”** – means an irrevocable signed offer by the Tenant to enter into an agreement of lease with the Landlord in respect of the Premises.
- 1.1.23 **“Operating Costs”** - all costs and charges arising from or incurred in connection with or in respect of the Property, Building or Leased Premises by the Landlord and which are not the responsibility of the Tenant in terms of this Lease, except to the extent expressly provided otherwise in this Agreement,
- 1.1.24 **“Other Charges”**– the monthly contribution towards the various utilities and other services payable by the Tenant, as set out in section 20 of the Schedule;
- 1.1.25 **“Parties”** - the Landlord and the Tenant or any of them and **“Party”** means any one of them, as the context may indicate;
- 1.1.26 **“Permitted Use”** – means the various retail sales and marketing uses of the Leased Premises as set out in the Schedule and all reasonably ancillary uses thereto;
- 1.1.27 **“the Prime Rate”** - the nominal annual compounded monthly in arrear prime overdraft rate of interest charged by Nedbank Limited, from time to time and publicly quoted as such by Nedbank Limited, calculated on a 365 (three hundred

and sixty five) day factor, irrespective of whether or not the year is a leap year, as certified by any manager of Nedbank Limited, whose appointment as such it shall not be necessary to prove, and which certificate shall serve as prima facie proof of its contents;

- 1.1.28 **“the Property”** – means the property detailed in the Schedule and includes the Building;
 - 1.1.29 **“the Property Financiers”** - the bank or other institution which finances the Property on behalf of the Landlord;
 - 1.1.30 **“Rates”** – any assessment rates, taxes, fees, levies or charges (including municipal Council services levies) which may be charged by the Council or any other competent authority in respect of the Property;
 - 1.1.31 **“the Renewal Period”** – the lease renewal period(s) as detailed in the Schedule;
 - 1.1.32 **“Rentable Area”** means Rentable Area determined in accordance with the SAPOA Method;
 - 1.1.33 **“SAPOA”** - the South African Property Owners Association;
 - 1.1.34 **“SAPOA Method”** the Method for Measuring Floor Area in Buildings, 2005, published by SAPOA;
 - 1.1.35 **“the Schedule”** – the schedule to the Lease Agreement;
 - 1.1.36 **“the Signature Date”** - the date of signature of this Agreement by the last Party signing;
 - 1.1.37 **“the Specifications”** – the Landlord’s standard specifications of the Leased premises and (if any) any tenant variations thereto agreed in writing between the parties and signed by them as set out in Annexure F;
 - 1.1.38 **“the Turnover Rental”** – the rental calculated as a percentage of Tenant’s annual turnover as set out in the Schedule and Annexure H;
 - 1.1.39 **“the Trading Date”** - means the agreed date between both parties for the Tenant to commence with trading in respect of the Leased premises.
- 1.2 This Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any

Party shall be deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.

- 1.3 Where appropriate, meanings ascribed to defined words and expressions in 1.1, shall impose substantive obligations on the Parties as provided for in the definition concerned.
- 1.4 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.5 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that clause.
- 1.6 When any number of days is prescribed in this Agreement for the giving of notice, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the immediately following Business Day.
- 1.7 In the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, then the relevant date for payment shall be the immediately following Business Day.
- 1.8 The *contra proferentum* rule shall not apply and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 1.9 The *eiusdem generis* rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall be interpreted to be illustrative only.
- 1.10 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 1.11 The appendices, schedules and annexes to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such appendices, schedules and annexes. To the extent that there is any conflict between the appendices, schedules or annexes to this Agreement and this Agreement, the provisions of this Agreement shall prevail.
- 1.12 In the event of a dispute as to figures where such figures have been referred to in numerals and words the figure stated in words shall prevail.

2 RECORDAL

- 2.1 It is recorded that –

- 2.1.1 The Landlord has developed / is in the process of development and construction of a retail shopping centre on the Property;
- 2.1.2 The Landlord wishes to let the Leased Premises to the Tenant who wishes to hire same from the Landlord;
- 2.1.3 The Parties wish to regulate their rights concerning the letting of the Leased Premises by the Landlord to the Tenant and the Parties accordingly agree as set out herein.

3 DURATION AND RENEWAL

- 3.1 Notwithstanding the Signature Date, the Landlord hereby lets the Leased Premises to the Tenant with effect from the Commencement Date for the Initial Lease Period, subject to this clause 3 and clauses 17 and 21.
- 3.2 Provided that the Tenant is not in unremedied breach of the terms of this Lease during the Initial Lease Period, the Tenant shall have an irrevocable option ("**the Renewal Option**") to renew this Lease Agreement for the Renewal Period on the same terms and conditions as contained in this Lease Agreement, save as set out below -
 - 3.2.1 In the event of the Tenant exercising the Renewal Option, the Tenant shall be obliged to do so at least 6 (six) months prior to expiry of the Initial Lease Period, but not earlier than 9 (nine) months prior to expiry of the Initial lease Period, by written notice to the Landlord;
 - 3.2.2 In the event of the Tenant exercising the Renewal Option, the Monthly Rental payable during the Renewal Period shall be such sum as may be agreed upon between the Parties and failing agreement between the Parties, the fair market rental for premises similar to the Leased Premises in the same area at that time.
 - 3.2.3 The rate of escalation during the Renewal Period shall be a rate of escalation agreed to between the Tenant and the Landlord and failing agreement shall be the market escalation at the time pertaining to premises similar to the Leased Premises in the same area, at that time.
 - 3.2.4 Should the Parties fail to agree the fair market rental and/or escalation pertaining to the Leased Premises during the Renewal Period, at least 6 (six) months prior to the expiry of the Initial Lease Period, a dispute will be deemed to exist and such dispute shall be referred to an independent expert agreed upon between the Parties and failing agreement then an expert appointed by the President for the time being of The South African Council for Shopping Centres, which expert shall act as an expert and not as an arbitrator or a *quasi* arbitrator provided that the

decision of the expert shall be final and binding on the Parties and shall not be subject to an appeal or review except in the case of a manifest or material error on the part of the expert and the costs of the expert shall be borne in equal shares by the Tenant and the Landlord.

- 3.2.5 Should the expert's decision not be reached prior to the commencement of the Renewal Period, the Tenant shall continue to pay the Monthly Rental payable to the Landlord in the last month of the Initial Lease Period, until such time as the expert's decision has been reached. Any shortfall in rental paid by the Tenant until the date the expert's decision has been reached shall immediately be paid to the Landlord and any premium paid by the Tenant to the Landlord shall be repaid to the Tenant after such determination.
- 3.2.6 If the Tenant fails to exercise the Renewal Option within the time period referred to in 3.2.1 then the Renewal Option shall lapse and be of no further force or effect.
- 3.2.7 In the event that the Renewal Option is exercised then on expiry of the Renewal Period this Agreement shall terminate automatically and without notice. It is accordingly recorded notwithstanding anything to the contrary and for the avoidance of any doubt, the Tenant has no expectation and that the Landlord or its agents have made no such representations or created any form of expectation in regard to a further right of renewal after the Renewal Period. The Tenant warrants that the Landlord and/or employees or agents made no such representation.
- 3.3 The Tenant shall not, under any circumstances whatsoever or howsoever arising, discontinue trading from the Leased Premises during the Lease Period. In the event that the Tenant breaches this provision, such breach shall constitute a material breach and the Landlord shall be immediately entitled to retain all deposits and security amounts as pre-estimated liquidated damages. The Landlord shall further be entitled to payment of the full rental amount for the lease period still remaining as further pre-estimated liquidated damages and the Tenant agrees such damages represent a fair and reasonable cost incurred by the Landlord.
- 3.4 In the event that the Tenant experiences economic hardship during its tenancy of the Leased Premises, then the Tenant shall be obliged to consult with the Landlord as soon as reasonably possible to ensure the Parties can agree a temporary arrangement and prevent the Tenant breaching clause 3.3.

4 MONTHLY RENTAL AND OTHER CHARGES

- 4.1 The Tenant shall with effect from the Lease Commencement Date as set out in the Schedule pay the Landlord:

- 4.1.1 either the Basic Monthly Rental as set out in the Schedule or the Turnover Rental (if applicable) and as set out in Annexure H, whichever is the greater; and
 - 4.1.2 the Other Charges as set out in the Schedule and/ or referred to below;
- 4.2 In the event the Tenant commences trading prior to the Commencement and/or the agreed Trading Date/s then the Tenant shall remain liable for payment of the aforementioned Basic Rentals and other charges pro-rated for each day of trading prior to the Commencement and/or the agreed Trading Date/s
- 4.3 The Basic Rental will escalate annually on each anniversary of the Lease Commencement date at the rate set out in the schedule.
- 4.4 Save for the payment of Turnover Rental which shall be paid in accordance with the provisions of Annexure H of this Agreement, the Tenant shall pay the Rentals and the charges listed below not later than the first day of each month, which should have cleared the Landlord's nominated account.
- 4.5 The Tenant shall, in addition to the Basic Monthly Rental, be responsible for and pay promptly the Other Charges when due including, but not limited to –:
 - 4.5.1 the metered cost of all utilities, including electricity and water, consumed on the Leased Premises. Should the meters not be operational a pro-rata share of consumption shall be invoiced;
 - 4.5.2 furthermore, if set out in the Schedule, a proportionate share of the costs of electricity and water consumed in the common areas of the Building and the Property (including the electricity and water consumed by the air-conditioning plant and cooling tower), based on the Tenant's Pro Rata Share or, in the event that common sub meters exist for more than one leased premises in the Building, the proportion that the rentable area of the Leased Premises bears to the total occupied area serviced by the common sub-meters;
 - 4.5.3 It is pertinently agreed and recorded that the supply of electricity to the leased premises shall not be an incident of occupation, may be contracted out by the landlord, and/or may be terminated in the event that the tenant fails to make prompt payment of any payment obligations in this regard and as such until full payment of all arrears electricity utilities and related charges have been settled in full. It is furthermore agreed that the landlord shall be entitled to access the leased premises, without any limitation of its rights, for the purposes of disconnecting the electricity supply.

- 4.5.4 the readings of the meter or sub-meter shall be carried out by the meter reading agency appointed by the Landlord from time to time during the Period of Lease. The Tenant shall pay to the Landlord the monthly meter reading cost incurred by the Landlord and it shall pay its proportion share of the costs of the servicing of the meter or sub-meter.
- 4.5.5 in addition to the Basic Monthly Rental and throughout the duration of this lease, the Tenant shall be liable for and shall monthly pay to the Landlord for rates and taxes of the Building/Property, the Tenant's pro-rata share of the rates and taxes payable by the Tenant. In the event that the rates and taxes are increased during the currency of this lease the Landlord shall be entitled to charge the Tenant such increase with effect from the date upon which such increase shall become effective. In such event the Tenant shall pay its pro-rata share of such increase.
- 4.5.6 furthermore, throughout the duration of the lease the Tenant shall be liable and shall pay monthly to the Landlord, being a direct cost for the leased premises or the Tenant's pro-rata share in respect of the following:-
- 4.5.6.1.1 Sewerage and other service charges, and
- 4.5.6.1.2 Refuse removal,
- 4.5.7 the Tenant shall pay to the Landlord the monthly marketing fee as set out in clause 20 of the schedule.
- 4.5.7 any additional services not contained in the budget prepared in accordance with 4.6 in respect of the Lease Year concerned and which are, in the opinion of the Landlord, necessary for the proper management of the Building or which are provided at the Tenant's written request.
- 4.6 The Landlord shall, prior to the commencement of each successive Lease Year, prepare a breakdown in respect of the other charges and rates for the forthcoming Lease Year, specifying the increased monthly amount payable by the Tenant in the following year and shall upon receipt of request by the Tenant furnish such breakdown to the Tenant within a reasonable period.
- 4.7 For the avoidance of doubt, save as expressly provided otherwise in the Agreement, if any of the charges payable pursuant to the provisions of this clause are charged in respect of the entire Building/Property and not in respect of the Leases Premises only, then the Tenant shall pay the Tenant's pro-rata share thereof.
- 4.8 A failure by the Tenant to pay any of the aforesaid charges shall constitute a material breach of the Lease Agreement. In such event the Landlord shall be entitled but not obliged, without prejudice to any other rights or remedies it may have, to pay any amounts due and payable

by the Tenant and the Tenant shall refund such payments to the Landlord on demand, together with interest thereon calculated in accordance with 4.11.

- 4.9 Any dispute in relation to the amount payable in respect of Other Charges shall be determined by the Landlord's auditor who will determine the dispute as an expert and not as an arbitrator and whose determination will be binding on the Parties, save in the event of manifest error.
- 4.10 All amounts payable by the Tenant to the Landlord in terms of this Lease shall be paid free of exchange, without deduction or set-off or delay for any cause whatsoever by electronic payment directly into the Landlord's nominated bank account or by such other means as the Landlord may from time to time by notice in writing direct.
- 4.11 The Landlord may, in its sole and absolute discretion, levy interest on all overdue amounts a *tempore morae* until date of payment in full at the Prime Rate plus 2%, compounded monthly.
- 4.12 A certificate under the hand of the financial director of the Landlord (whose appointment and authority it shall not be necessary to prove) shall constitute *prima facie* evidence of the outstanding amount from time to time and shall constitute a liquid document for all purposes.
- 4.13 The Tenant undertakes to pay all VAT, at the standard rate which is applicable from time to time, leviable on any amounts (including the basic rental and the charges referred to herein) payable by the Tenant in terms of this Agreement and any amounts payable by the Tenant in terms of this Agreement are deemed to be exclusive of VAT, unless the contrary is stated.

5 SECURITY FOR RENTAL

- 5.1 Within 7 (seven) days of receipt of request by the Landlord or its agent and subject to clause 5.2 above, the Tenant shall provide to the Landlord:
- 5.1.1 A security deposit in cleared funds deposited into the Landlord's nominated bank account, which shall not be interest bearing, or an irrevocable bank guarantee for the security deposit amount as set out clause 28 of the schedule, which deposit/or which guarantee will be as security for any unpaid rent or any other amounts owing to the Landlord by the Tenant under and in terms of the lease agreement. In the event that the Tenant elects to furnish a guarantee, the guarantee shall be an irrevocable bank guarantee and contain terms and conditions acceptable to the Landlord and from a registered financial institution at the sole discretion of the Landlord and shall substantially comply with the terms set out in Annexure D;
- 5.1.2 (if applicable in terms of the Schedule) A Suretyship, as set out in Annexure G, signed by the Tenant's sureties; and

- 5.1.3 All documents as may be required in law by the Landlord in terms of the Financial Intelligence Centre Act No. 38 of 2001 and of which the Landlord shall advise the Tenant from time to time; and
- 5.1.4 Within 3 (three) months after each financial year end of the Tenant, the Tenant shall deliver to the Landlord a copy of its audited annual financial statements relating to the previous financial year.
- 5.2 The furnishing of the security deposit and/or the documents listed in clause 5.1 shall be provided within the time period as stipulated in clause 5.1. In the event of the failure by the Tenant to furnish the security deposit and/or the said documents, shall entitle the Landlord to withhold beneficial occupation to the Tenant. The provisions of this clause shall not derogate from the liability of the Tenant to pay the rental from the commencement date and/or any other amount as and when due in terms of this lease agreement, until the Landlord has managed to find a new tenant and notwithstanding that the Tenant is not in physical occupation of the leased premises. Furthermore in these circumstances the Landlord shall be entitled to claim its damages from the Tenant.
- 5.3 The Tenant hereby consents to authorise the Landlord at all times to contact, request and obtain information from any person, business or credit bureaux relevant to an assessment of the behaviour, profile, payment pattern and creditworthiness of the Tenant.
- 5.4 The Landlord shall have the right of applying the whole or a portion of the cash or the irrevocable bank guarantee towards the payment of any liability of whatsoever nature for which the Tenant is responsible. If any portion of the cash deposit or the irrevocable bank guarantee is so applied, the Tenant shall forthwith reinstate the cash deposit or the irrevocable bank guarantee to its original amount. The provisions of this clause, shall not derogate from the liability of the Tenant to pay the Rental and/or any other amounts as and when due in terms of this Lease Agreement and shall further not derogate from the Landlord's right to place the Tenant in breach.
- 5.5 The guarantee shall be transferable to the Property Financier and the Landlord's permitted assigns.
- 5.6 The cash deposit and/or the irrevocable guarantee (or the balance thereof), as the case may be, shall be refunded or returned to the Tenant 3 (three) months after the Tenant has vacated the premises and the Tenant has completely discharged all of the Tenant's obligations to the Landlord arising from the lease. The cash deposit or the balance thereof shall be refunded to the Tenant free of interest. The Tenant shall not be entitled to set off against the deposit or the irrevocable bank guarantee the basic rental or any other amount/s payable by it.

6 BENEFICIAL OCCUPATION

6.1 The Tenant shall be entitled, after providing the required FICA documentation, signed Offer to Lease and deposit in cleared funds / bank guarantee /surety, to obtain access to the Leased Premises on the Beneficial Occupation Date for the purpose of fitting its installation, fixtures and furnishings. All the provisions of this Lease will apply during the Beneficial Occupation Period, save that no Monthly Rental will be payable. Notwithstanding the foregoing, during the Beneficial Occupation Period the Tenant shall be liable for and shall on demand pay to the Landlord:-

6.1.1 all and any charges arising directly out of the Tenant's use of electricity water and other utilities in respect of and attributable to the Tenant's use of the Leased Premises and/or Property during the fit out of the Leased Premises; and

6.1.2 a proportionate share of the cost of all refuse removal and sewerage charges levied from time to time against the Leased Premises and/or Property by the Council;

and the Landlord shall provide all supporting documentation in respect of such costs.

6.2 The Tenant shall upon demand pay the removal cost of its refuse and/or rubble arising from the installation or fitting referred to above or from any other cause of the Tenant whatsoever. All refuse and debris shall be removed by the Tenant at intervals of no longer than 1 (one) Business Day. Without prejudice to any other rights which the Landlord has in terms of this Lease and in law, the Landlord shall be entitled but not obliged to remove such refuse and/or rubble at the Tenant's cost and the Tenant shall pay such costs to the Landlord upon presentation of invoice.

6.3 If the Landlord is unable to give the Tenant beneficial occupation of the Leased Premises on the Beneficial Occupation Date by reason of the Leased Premises being incomplete due to no fault of the Landlord, then:

6.3.1 The Tenant shall have no claim of cancellation of this Lease or for damages;

6.3.2 the Beneficial Occupation Date shall be postponed until the Leased Premises is available and ready for occupation and the Tenant shall take occupation on the date that Landlord advises the Tenant that the Leased Premises are available for beneficial occupation; and

6.3.3 and the Commencement Date and Initial Lease Period will be adjusted accordingly.

6.4 Any dispute between the parties as to whether the Leased Premises are available for occupation shall be referred for determination to the Landlord's architect and the decision of

such architect, who shall act as an expert and not as an arbitrator, shall be final and binding on the parties.

- 6.5 In the event that the Tenant fails to commence trading from the Leased Premises on the agreed Trading Date, despite being given beneficial occupation of the Leased Premises then the Landlord shall be entitled to claim 5 (five) times the Daily Rental from the Commencement Date for each and every day that the Tenant fails to trade from the Leased Premises. The daily rental will be calculated as the monthly gross rental multiplied by twelve and divided by 365 days.

7 SPECIFICATION AND TENANT VARIATION

- 7.1 The Landlord will construct the Leased Premises in accordance with the Landlord's standard Specifications as detailed in Annexure F.
- 7.2 The Tenant may request variations to the Landlord's standard Specifications, which the Landlord shall consider and will be costed by the Landlord. Once the parties agree on the variations they will be reduced to writing and signed by both parties and attached hereto as part of Annexure F. The Tenant will be required to pay for all variations prior to the Landlord affecting same on the Leased Premise and within 14 (fourteen) days of the Landlord requesting payment (or such extended time period at the sole discretion of the Landlord) failing which such variation shall automatically no longer be offered by the Landlord.
- 7.3 Prior to the Beneficial Occupation Date the Tenant will employ a suitably qualified Architect and / designer who will prepare details and drawings of the Leased Premises layout for the Landlord's written approval. Any delay by the Tenant in this respect and / or delay in the Tenant taking occupation on the Beneficial Occupation Date shall constitute a material breach.
- 7.4 The Tenant shall commence with its fit out and layout installation within 72 (seventy-two) hours of having been provided with beneficial occupation of the Leased Premises. If the Landlord has provided an Architect schedule with time lines for fit out then the Tenant shall adhere to such time lines during the Beneficial Occupation period.
- 7.5 Only if applicable and should the parties have agreed in writing to the Landlord paying a contribution towards the Tenant's fit out / layout then such contribution shall only be payable after:
- 7.5.1 The Tenant is trading from the Leased Premises;
- 7.5.2 The Tenant has provided and signed all documentation and / or paid all amounts due in terms of clauses 5.1 and 6.1 and a valid tax invoice by the Tenant for the contribution payable;

7.5.3 The Tenant has accepted and signed off the Leased Premises as complete;

7.5.4 This Lease Agreement has been signed by the Tenant; and.

7.5.5 The Tenant is not in breach of the offer to lease or the lease agreement.

7.6 Unless the Landlord requires that the Tenant reinstate the Leased Premises to its original state / condition, all fixtures and fittings contemplated in this clause 7 and Annexure F, once installed, shall form part of the Leased Premises and as such, shall belong to the Landlord.

7.7 The Tenant shall be responsible for telephone and data communication services at the Leased Premises and shall be directly responsible for contracting with the supplier thereof and for payments of these charges and any connection fees and deposits in respect thereof.

8 PERMITTED USES

8.1 The Tenant shall not use the leased premises for any purpose other than as set out in the schedule. The Tenant shall further not use any trade name/s and display or advertise such name/s in its leased premises or the shopping centre other than those set out in the schedule, without the Landlord's prior written consent.

8.2 It is recorded that the use of the leased premises as described in 8.1 as read with the schedule, was and remains a primary inducement and precondition to the Landlord's agreement to lease the leased premises to the Tenant.

8.3 The business conducted by the Tenant from the leased premises and in the complex shall not be on an exclusive basis. The Landlord does not warrant that any other premises in the shopping centre or complex will not be let for any of the purposes stipulated in the schedule, or that any other tenant in the shopping centre or the complex will not compete with any of the businesses of the Tenant.

8.4 If the Tenant breaches any of the provisions of clause 8 for a period or periods exceeding in aggregate 10 (ten) days it shall without prejudice to any other rights which the Landlord may have under this lease be liable to the Landlord for liquidated damages equal to twice the rent payable by it during the period of the breach.

9 LICENCES AND SUITABILITY OF THE LEASED PREMISES

9.1 The Tenant shall be responsible for obtaining any permit, licence and/or consent required for the conduct of the Tenant's business at the Leased Premises.

9.2 The Tenant shall not have any claim (including any fines or penalties) whatsoever against the Landlord, its employees, officers and/or directors in relation to the Tenant being unable

to obtain any licences, permits and/or consents necessary to conduct its business at the Leased Premises and the Tenant accordingly indemnifies the Landlord for such claims.

- 9.3 A failure by the Tenant to obtain the necessary licence to conduct its business from the Leased Premises shall under no circumstances whatsoever constitute as grounds for cancellation of this Lease by the Tenant.

10 INSURANCE

- 10.1 The Tenant shall be obliged at its cost to take out and keep in force during the currency of the Lease:

10.1.1 public liability / all risks insurance;

10.1.2 comprehensive insurance in respect of its stock in trade, equipment, records and fixtures and fittings installed on the Leased Premises to conduct the Tenant's business.

10.1.3 replacement of any plate or other glass, window panels and shopfronts forming part of the Leased Premises

- 10.2 A copy of the policy of insurance referred to in clause 10.1 and any amendments thereto shall be lodged with the Landlord within 7 (seven) days from the Commencement Date or such extended period in the sole discretion of the Landlord.

- 10.3 If any event occurs which is likely to give rise to any claim under any of the policies of insurance referred to in 10.1, the Tenant shall provide sufficient details thereof to the Landlord in writing.

- 10.4 Without admitting liability to any third party, the Landlord shall insure the Leased Premises to their full replacement value, as reasonably determined by the Landlord from time to time, for all normal immovable property insurable risks.

- 10.5 The insurance company appointed by the Landlord shall in its sole discretion determine the premium in respect of the risks insured on the basis that the Leased Premises are used for non-hazardous trading purposes.

- 10.6 The Tenant shall not do or permit anything to be done which renders void or voidable any insurance policy taken out in terms of this clause 10 or increases the premiums payable. If the premiums are increased by the insurer as a result of anything done or permitted to be done by the Tenant, the Tenant shall, without prejudice to any other rights or remedies the Landlord may have, bear the cost of such increase, which shall be payable to the Landlord on demand.

- 10.7 Notwithstanding anything to the contrary contained in this Agreement, the Landlord's insurers shall have a right of recourse against the Tenant for all claims covered by the Landlord's insurance and which claims arise as a direct result of the acts or omissions or wilful misconduct of the Tenant or any person for whom it is vicariously liable at law.

11 CONDITION OF THE LEASED PREMISES AND MAINTENANCE

- 11.1 Save where the Tenant has notified the Landlord of any snag or defect in the Leased Premises within 14 (fourteen) days of the Beneficial Occupation Date, the Tenant shall be deemed to have accepted the Leased Premises and the Appurtenances as being complete and without defect at the Beneficial Occupation Date.
- 11.2 During the currency of this Lease, the Tenant shall be obliged to maintain and repair the whole of the interior and shop face exterior of the Lease Premises and all parts thereof, together with all signs, window panels, doors, door mechanisms, fixtures, fittings and the Appurtenances, in good order and condition, fair wear and tear excepted, and for such purpose shall immediately attend to such repairs and provide such replacements as may be required.
- 11.3 The Tenant shall return the Leased Premises to the Landlord at the expiry or earlier termination of this Lease in no worse order and condition than at the Beneficial Occupation Date, fair wear and tear excepted. Any upgrades installed by the Tenant after the Beneficial Occupation Date shall, at the Landlord's discretion either be retained and no further costs shall be payable by the Landlord or removed and the Leased Premises re-instated to the condition they were in on the Beneficial Occupation Date at the Tenant's sole costs.
- 11.4 The Parties have, agreed that the Landlord will manage the repair and maintenance of the exterior of the Building.
- 11.5 In the event that the Tenant does not carry out any repairs and/or maintenance which it is obliged to carry out in terms of this Agreement, within 7 (seven) days of receipt of written notice calling upon it to carry out such repairs and/or maintenance, the Landlord shall be entitled to carry out such repairs and/or maintenance of the Leased Premises and/or the Building and recover the costs of such repairs and/or maintenance from the Tenant. The Tenant undertakes to reimburse the Landlord for the costs of such repairs and/or maintenance within 14 (fourteen) days after receipt of the invoice/s in respect of all repairs and/or maintenance.

12 TENANT'S GENERAL OBLIGATIONS

The Tenant shall during the Beneficial Occupation Period and the Lease Period –

- 12.1 in all material respects comply with all laws, by-laws and regulations relating to tenants or occupiers of business premises or affecting the conduct of any business carried on in the Leased Premises;
- 12.2 in all material respects not contravene or permit the contravention of any of the conditions of title (or if applicable any head lease) under which the Property is held by the Landlord or any of the provisions of the town-planning schemes applicable to the Property;
- 12.3 not materially interfere with the electrical installations in the Leased Premises or the air-conditioning installations or equipment, other than to repair and maintain the installations or equipment in accordance with its obligations contemplated in clause 11 above;
- 12.4 not store, harbour, or permit the storage or harbouring of any articles upon the Leased Premises, or do or permit anything to be done as a result whereof the fire insurance in respect of the Leased Premises may be liable to become void or voidable. The Tenant hereby indemnifies the Landlord against any damage or loss which the Landlord may suffer as a result of the presence of such inflammable material or substance;
- 12.5 Maintain and / or replace all light fittings include all electrical globes, ballast and starters, fluorescent lamps, diffusers and incandescent fittings in the Leased Premises;
- 12.6 at all times reasonably ensure that no nuisance emanates from the Leased Premises or Property or cause annoyance or discomfort to any of the tenants of the Property;
- 12.7 not hold or permit the holding of sales by public auction in or upon the Leased Premises;
- 12.8 remove any obstruction or blockage of any sewerage or water pipes or drains in or used in connection with the Leased Premises, and where necessary repair or replace such sewerage or water pipes or drains;
- 12.9 keep the Leased Premises clean and free from vermin to the satisfaction of any public authority having jurisdiction over the Property in the fields of public health and/or hygiene;
- 12.10 not permit the accumulation of refuse in or outside the Leased Premises;
- 12.11 at its own expense repair any damage caused to the Leased Premises by forcible entry;
- 12.12 not overload the floor, walls, or structures of the Leased Premises or Building;
- 12.13 be responsible for and shall pay all costs in respect of clearing the leased premises and the interior and exterior of the windows of the leased premises;
- 12.14 at the termination of this Lease, or any extension thereof, reinstate the electrical installation of the Leased Premises and furnish the Landlord with a Certificate of Compliance issued by a duly qualified electrician registered with the Electrical Contracting Board of South Africa.

In addition, the Tenant shall obtain a valid Certificate of Compliance on expiry of the Beneficial Occupation Period and annually thereafter and provided a copy thereof to the Landlord within 7 (seven) days of the anniversary of each Commencement Date;

- 12.15 assume full control of the Leased Premises for purposes of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) relating to the Leased Premises and shall furthermore indemnify the Landlord against any claims that may be instituted against the Landlord in terms of the said Act;
- 12.16 comply with all Environmental Laws and shall furthermore indemnify the Landlord against any claims that may be instituted against the Landlord in terms of the said Environmental Laws; and
- 12.17 ensure that the provisions of the Tobacco Products Control Act of 1993 (as amended), together with all its regulations (as amended), are complied with by all its employees, visitors, invitees or clients;
- 12.18 The Tenant acknowledges that construction on the Property or in the area in which the Property is situated may be incomplete and that it and every person claiming occupation and use through it may suffer inconvenience from building operations and from noise and dust resulting therefrom and the Tenant shall have no claim against the Landlord or its contractors by reason of any such inconvenience.
- 12.19 The Tenant acknowledges the Landlord's duty to comply with the Financial Intelligence Centre Act, 38 of 2001, as amended, and agrees to provide the Landlord with the relevant documents as required by law.

13 RULES AND REGULATIONS / HOUSE RULES

- 13.1 The Landlord shall have the right to make, vary, amend or add to rules and regulations or house rules governing the relationship between tenants of the Building and Property and the conduct of the Tenant's business in regard to:
 - 13.1.1 The Common Areas specifically referred to in this Agreement;
 - 13.1.2 Any other facilities or areas which may exist in the Building;
 - 13.1.3 The use of joint, Common Areas or open areas of the Building;
 - 13.1.4 Parking and deliveries;
 - 13.1.5 Any other matters relevant to the administration and functioning of the Building;and

the Tenant undertakes to observe the rules and regulations or house rules in force from time to time.

13.2 The Landlord has issued House Rules which the Tenant is aware of, and a copy of same can be made available upon receipt of request by the Tenant.

13.3 The Landlord shall have the right in its sole discretion to change the name of the Building. The Landlord will not be liable for any losses or damages suffered by the Tenant as a result of such change.

14 ALTERATIONS AND ADDITIONS

14.1 The Tenant shall not make any alterations or additions or improvements ("alterations") to the Leased Premises without the Landlord's prior written approval of such changes.

14.2 If any alterations are made by the Tenant with the Landlord's consent, then –

14.2.1 at the time the consent is given the Parties shall agree in writing whether or not, after the termination of this Lease, the Tenant shall remove the alterations (or such part thereof) and reinstate the Leased Premises (or that part of the Leased Premises in question), at the Tenant's cost;

14.2.2 to the extent to which the Parties agree at the time that such alterations are not removed same shall become the Landlord's property and no compensation therefore shall be payable by the Landlord.

14.2.3 to the extent to which the Parties agree at the time that such alterations are removed, the Tenant shall complete the removal of any alterations and the reinstatement of the Leased Premises which may be required in terms of clause 14.2.1 in the time period agreed between the Parties at the time the alterations are contemplated.

14.3 If any alterations are made by the Tenant without the Landlord's consent then–

14.3.1 if the Tenant is required to do so by written notice given by the Landlord, the Tenant shall remove the alterations (or such part thereof as the Landlord may require) and reinstate the Leased Premises (or that part of the Leased Premises in question) at the Tenant's cost, to its same condition prior to the carrying out of such alterations fair wear and tear excepted, failing which the Landlord shall be entitled to attend thereto and to claim and obtain payment of the costs thereof from the Tenant;

14.3.2 the Tenant shall complete the removal of any alterations and the reinstatement of the Leased Premises which may be required in terms of clause 14.3.1 by the

earlier of the termination of this Lease or 21 (twenty one) days after the receipt of such written notice;

- 14.3.3 to the extent to which the Landlord does not exercise its right in terms of clause 14.3.1, such alterations which the Landlord does not require to be removed shall not be removed by the Tenant, but shall become the Landlord's property and no compensation therefore shall be payable by the Landlord.

15 SECURITY

- 15.1 The Tenant shall have the right to provide, install, replace, maintain and remove its own security system within the Leased Premises during the term of the lease or any renewal. This shall include the right to provide its own security officer coverage and install, in a workmanlike fashion, system components of the Tenant's choosing that include but are not limited to security cameras, televisions, monitors and other electronic monitoring devices, electronic door strikes, door contacts, exit sensors, car readers (which may be mounted immediately outside the Leased Premises in common areas accessible from the Leased Premises), motion detectors, glass break detectors and other similar security systems and/or methods which will protect the Leased Premises.
- 15.2 The Tenant is responsible for the security costs of their leased premises and will contribute a pro-rata amount monthly towards the cost of security for the building/property, which amount will become payable on the first day of each month.
- 15.3 The Landlord shall not be liable for any loss, damage, costs, claims or the like which may arise from a failure by the Landlord or Tenant's respective security measures to prevent a loss and the Tenant indemnifies the Landlord against such claims.

16 LANDLORD'S RIGHTS

- 16.1 On prior reasonable notice to the Tenant, the Landlord and the Landlord's agents and contractors shall be entitled to enter the Leased Premises at all reasonable times, during business hours, for purposes of inspecting, repairing or improving the Leased Premises.
- 16.2 The Landlord will ensure that reasonable precautions are taken to minimise inconvenience to the Tenant and shall minimise any interruption to the access of the Leased Premises or the business of the Tenant.
- 16.3 The Tenant shall, at all reasonable times, during the period of 12 (twelve) months immediately preceding the termination or expiry of the Lease, permit prospective tenants to view the interior of the Leased Premises during business hours and the Landlord or any incoming tenant to exhibit on the Leased Premises any notice that may be required in

connection with any application for any licence to carry on business in the Leased Premises and "To Let" notices.

- 16.4 The Landlord shall at all times prior to the Commencement Date, as well as during the currency of this Agreement or any renewal thereof, have the right upon reasonable notice to require the Tenant to occupy, on the same terms and conditions, different premises within the same Building, provided such premises are similar in extent, standard and area to the Leased Premises. The reasonable cost of relocating the Tenant shall be borne by the Landlord should the Landlord wish to exercise this right. The Tenant shall have no claim of whatsoever nature against the Landlord as a result of such relocation.
- 16.5 This lease is not subject to any exclusivity provisions and the Landlord shall be entitled to lease other Leased Premises on the Property to other tenants who operate the same or similar businesses to that of the Tenant.

17 DAMAGE OR DESTRUCTION OF LEASED PREMISES

- 17.1 Should the Leased Premises be destroyed or damaged to the extent which prevents the Tenant from having beneficial occupation of the Leased Premises, then the Landlord may elect to cancel this Lease by giving written notice to the Tenant within 60 (sixty) days of the date of such destruction or damage, and in the event of notice being given, the Lease shall be deemed to have been cancelled on the date of destruction and neither Party shall have any further claims of whatever nature against the other.
- 17.2 Should the Landlord elect not to terminate this Lease then:
- 17.2.1 the Landlord shall reinstate the Leased Premises as quickly as is reasonably possible, substantially to its form before the damage or destruction;
 - 17.2.2 the Tenant shall, subject to clause 17.2.3, and for as long as it is deprived of beneficial occupation of the Leased Premises, not be liable for Rental; and
 - 17.2.3 the Tenant shall, if given beneficial occupation or is able to trade from the Leased Premises, be liable for payment of rent in accordance with the Tenant's Pro-Rata Share or as agreed between the Landlord and Tenant or, failing such agreement, as may be determined in clause 24 [*Expert Decision*] below;
 - 17.2.4 the Initial Lease Period or Renewal Period as the case may be shall, subject to 17.2.5, be extended by the period during which the Tenant is deprived of the beneficial occupation of the whole of the Leased Premises, on the same terms and conditions, *mutatis mutandis*, as contained in this Agreement

17.2.5 annual escalation of the Rental shall apply as if the Rental had not been suspended as provided for in clause 4.

17.3 In the event of the Leased Premises being damaged in such a manner that they are nevertheless reasonably tenantable for the purposes envisaged in clause 17 of the schedule, then the Lease shall not be cancelled, but the Rental payable under the Lease, shall be abated until the damage has been repaired, having regard to the extent to which and the period during which the Tenant is unable to enjoy full beneficial occupation of the Leased Premises.

17.4 Notwithstanding anything to the contrary contained in this Lease Agreement, it is a principle of this Lease, that the Tenant shall remain liable to pay all Rentals and other amounts due in terms of this Lease Agreement in the event of a repudiation of any insurance claim as a result of any negligence or wilful act or omission on the part of the Tenant or the Tenant's servants, contractors, employees, agents, concessionaries, contractors, and invitees.

18 SUBLETTING, CESSION AND TRANSFER OF OWNERSHIP

18.1 The Tenant shall not cede, assign, mortgage, pledge, transfer or in any other way deal with any of its rights under this lease, nor sub-let the leased premises or any part thereof, nor allow anyone else to occupy the leased premises or any part thereof on any terms and conditions whatsoever or for any reason whatsoever, without the Landlord's prior written consent which in the case of sub-letting only, shall not be unreasonably withheld.

18.2 In respect of sub-letting referred to in 18.1 the Tenant shall not sub-let the leased premises or any portion thereof at a greater rent than that payable to the Landlord for the leased premises or for such portion (the rent payable by the Tenant to the Landlord for such portion to be deemed to be the same proportion of the total rent payable by the Tenant for the leased premises as the square meterage of such portion bears to the total square meterage of the leased premises).

18.3 Notwithstanding anything to the contrary, contained or implied herein, should the Tenant wish to sub-let the whole or any part of the leased premises, in terms of clause 18.1 then –

18.3.1 application for the consent of the Landlord shall be made to the Landlord;

18.3.1.1 in writing, setting out the name, address and business of the sub-tenant as well as setting out all credit and trade references relating to the proposed sub-tenant as may be necessary for the Landlord to make an informed decision; and

- 18.3.1.2 not less than 60 (sixty) days and not more than 90 (ninety) days prior to the date on which it is contemplated that the proposed sub-lease shall commence;
- 18.3.1.3 the Landlord shall on receipt of such an application, be entitled to give written notice to the Tenant of the Landlord's consent to the sub-lease, provided that the Landlord shall not be required to grant its consent to the sub-lease unless the sub-tenant agrees in writing to make payments of the rent and all other amounts due in terms of this lease direct to the Landlord on behalf of the Tenant, on the distinct understanding that such undertaking shall in no way affect the obligations imposed on the Tenant in terms hereof; and
- 18.3.1.4 the Landlord may charge a fee for the administration of such application for sub-lease, request a copy of such sub-lease and generally impose such terms and conditions as it deems fit.
- 18.4 Should the Tenant be a private company, the transfer of any of its present issued shares, unissued share capital or any future increased share capital which results in a change in the effective control of the company or a disposal of its business, shall be deemed to be a cession in terms of the provisions of 18.1 above and the Tenant shall require the prior written consent of the Landlord. For the purpose of this clause 18.4, "**effective control**" shall, without limiting the generality of the meaning of the word, mean –
- 18.4.1 the beneficial ownership of the majority number of the Tenant's entire issued ordinary shares (and/or such other classes of shares holding normal voting rights) directly or indirectly and whether in law or in effect;
- 18.4.2 the right or ability to control, whether directly or indirectly, the votes attaching to the majority of the Tenant's issued ordinary shares (and/or such other classes of shares holding normal voting rights); and
- 18.4.3 The right or ability to control the decisions of the board of directors of the Tenant.
- 18.5 Should the Tenant be a public company as defined in the Companies Act, or listed on the Johannesburg Stock Exchange then a change of effective control of the company shall be deemed to be a cession in terms of 18.1 above and the Tenant shall require the prior written consent of the Landlord. For the purposes of 18.1 **Error! Reference source not found.** above a change in the effective control of that company shall mean:-
- 18.5.1 the disposal of the greater part of the assets of that company;
- 18.5.2 an amalgamation or merger of that company with another company;

- 18.5.3 the company entering into a scheme of arrangement;
- 18.5.4 the company being the subject of a mandatory offer as defined in the Companies Act or the acquisition of a beneficial interest in the securities of the regulated company greater than 35%.
- 18.6 Should the Tenant be a close corporation, then any change in the present members' interests which results in a change in effective control of the close corporation or a disposal of its business, shall be deemed to be a cession in terms of the provisions of 18.1 above and the Tenant shall require the prior written consent of the Landlord.
- 18.7 Should the Tenant be a trust, then any change in the present trustees, which results in a change in effective control of the trust or a disposal of its business, shall be deemed to be a cession in terms of the provisions of 18.1 above and the Tenant shall require the prior written consent of the Landlord.
- 18.8 Should the Tenant be a partnership, then any change in the present partners or a disposal of the business being conducted by the partnership, shall be deemed to be a cession in terms of the provisions of 18.1 above and the Tenant shall require the prior written consent of the Landlord.
- 18.9 Should the Tenant be any other form of legal entity or legal and business enterprise, then any similar change in effective control of such entity on an ownership and/or management and decision-making level shall be deemed to be a cession in terms of the provisions of 18.1 above and the Tenant shall require the prior written consent of the Landlord.
- 18.10 Without derogating from any provisions of this clause 18, any transfer or allotment of shares or the whole or part of a members interest, as the case may be, effected without the written consent of the Landlord shall constitute a breach by the Tenant of this agreement of lease

19 SIGNAGE

- 19.1 The Tenant shall not paint, affix, attach, erect or install or display on the outside of the Building, any advertising signs or other signs (including neon signs) or other promotional material unless same complies with all laws, by-laws and regulations in place affecting the Building and/or the Property and the Landlord has approved the Tenant's signage proposal in writing. If the Tenant commits a breach of this provision, the Landlord shall be entitled, after having requested the Tenant to do so, and 7 (seven) Business Days having elapsed from such request without the Tenant having removed the offending matter without order of court, to remove the offending matter.

- 19.2 The Tenant shall obtain a valid and up to date Electrical Compliance Certificate for each electric or neon sign on the Leased Premises, after affixing same to the Leased Premises and then again on termination of this Lease.
- 19.3 The Tenant shall maintain any sign, awning, canopy, decoration, lettering, advertising matter or any other thing in good order, condition and repair at all times (and on termination of the Lease, remove any such sign, awning, canopy, decoration, lettering, advertising matter and restore the Leased Premises, fair wear and tear alone excepted, to the same condition as prior to the erecting of such sign, awning, canopy, decoration, lettering or advertising matter) all at the Tenant's sole cost and expense.

20 EXEMPTION FROM LIABILITY

- 20.1 The Tenant, its customers, agents or invitees shall not have any claim or right of action against the Landlord and indemnifies the Landlord for damages, whether direct or indirect, loss, cancellation or otherwise of whatsoever nature, nor shall it be entitled to any remission of Rental or of any other charges or to withhold or defer payment of Rental or other charges, by reason of:
- 20.1.1 Any suspension of or interruption in the supply of water, electricity, air-conditioning or heating (however such suspension or interruption may arise) or by reason of any amenities in or on the Leased Premises or the Building being out of use or out of order for any reason or for any period;
- 20.1.2 Damage to or the loss of any stock-in-trade, fixtures or fittings, equipment, machines, raw materials, documentation or other articles kept in the Leased Premises (whether the property of the Tenant or that of another person) by rain, hail, lightning, fire, riot, strike, State's enemies, theft or burglary, with or without forcible entry, or through any other cause;
- 20.1.3 Any accident, personal injury, death or loss which may be sustained in or about the Leased Premises, the Building or the Property;
- 20.1.4 The Leased Premises or the Building or any part of the Building being in a defective condition or state of disrepair or any particular repair not being effected by the Landlord timeously or at all;
- 20.1.5 Any act or omission by any other tenant in the Building.
- 20.2 This exemption of liability of the Landlord does not include damages or injury caused by grossly negligent or wilful conduct on the part of the Landlord or its employees.

- 20.3 The Landlord shall not be liable for any loss of income, profit or savings and/or indirect, incidental and/or consequential damages howsoever arising.
- 20.4 Should the Building still be in the course of construction and/or redevelopment at the Beneficial Occupation Date or Commencement Date, whichever date occurs first, or during the Period of Lease, the Tenant acknowledges that it may suffer a certain amount of inconvenience as a result of the building operations caused by *inter alia* (amongst other things) noise and dust resulting from such building operations, as well as from the interruption in the supply of electricity, gas, water and non-availability of air-conditioning or other amenities. The Tenant will have no claim against the Landlord for compensation or damages or for a remission of Rental and other charges payable by the Tenant by reason of any such inconvenience during the period of construction or redevelopment.
- 20.5 In the event that the Landlord is delayed or hindered in or prevented from doing or performing any act or thing required hereunder by reason of strikes, lockouts, casualties, Act of God, *causus fortuitus*, labour difficulties, load-shedding, inability to procure materials, failure of power, governmental regulations, riots, insurrection, war or other causes beyond the control of the Landlord, then the Landlord shall not be responsible for such delays and the doing or performing of such act or occurrence shall be excused for the period of the delay and the Tenant will not have any claim of any nature against the Landlord or its agents for any loss, damage or injury which it may suffer by reason of the foregoing.
- 20.6 Save for the gross negligence of the Landlord, the **Tenant shall -**
- 20.6.1 not have any claim of any nature against the Landlord for any loss, damage or injury which the Tenant may directly or indirectly suffer (unless such loss, damage or injury is caused through the gross negligence of the Landlord or the Landlord's servants or employees) by reason of any latent or patent defects, including structural defects, in the leased premises or complex, or fire in the leased premises or the complex, or theft from the leased premises or by reason of the leased premises or the complex or any part thereof being in a defective condition or state of disrepair or any particular repair not being effected by the Landlord timeously or at all, or arising out of *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 complex, or arising out of a change of the shopping centre's name, its facade, appearance or any other feature thereof or any alterations or additions to the building, or arising in any manner whatsoever out of the use of the services in the leased premises or complex by any person whomsoever, for any purpose whatsoever, or arising from any other cause whatsoever;

- 20.6.2 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 to the leased premises and/or the complex, notwithstanding the cause of such failure or interruption (unless such failure or interruption is caused through the gross negligence of the Landlord or the Landlord's servants or employees);
- 20.6.3 not be entitled to withhold or defer payment of any amounts due in terms of this lease for any reason whatsoever; and
- 20.6.4 under no circumstances have any claim against the Landlord for consequential loss howsoever caused.
- 20.6.5 the Tenant hereby indemnifies the Landlord and holds it harmless against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property arising out of any occurrence in, upon or at the premises, or arising from any of its (or its servants, contractors, employees, agents, lessees and invitees) acts or omissions, including but not limited to its failure to perform its obligations contained in or arising pursuant to this lease, or due to its occupancy or use of the premises. Should the Landlord be made a party to any litigation commenced by or against the Tenant, then the Tenant indemnifies the Landlord and holds it harmless against all claims and it shall pay all costs, expenses and legal fees (including attorney and own client fees) incurred or paid by the Landlord in connection with such litigation. The Tenant undertakes to maintain and have in effect at all times suitable and sufficient insurance cover with a reputable insurance company in respect of any claims arising.

21 REMEDIES FOR BREACH AND CANCELLATION

21.1 Should the Tenant, –

- 21.1.1 fail to pay any rent or other amount due by it to the Landlord in terms of this lease on due date; and/or
- 21.1.2 commit any breach of the terms and conditions of this lease which is incapable of being remedied and which goes to the root of the agreement; and/or
- 21.1.3 commit any material breach of the material terms of this lease other than a breach referred to in 21.1.1 or 21.1.2 above and fails to remedy such breach within 7 (seven) days (or such longer period as may be reasonably required should such breach not be capable of

- being remedied within 7 (seven) days) after written notice requiring that it be remedied; and/or
- 21.1.4 consistently breach the terms of this agreement (whether by non-payment of rent or any other amount due to the Landlord on due date or by non-compliance with its terms) as to justify the Landlord in holding that the Tenant's conduct is inconsistent with an intention or an ability to carry out these terms; and/or
- 21.1.5 being a natural person dies during the currency of the lease; and/or
- 21.1.6 being a natural person, partnership or trust, commit an act of insolvency within the meaning of section 8 of the Insolvency Act, No 24 of 1936, or its successor in title; and/or
- 21.1.7 being a juristic person, company or close corporation, commit any acts which, if it was a natural person who is subject thereto, would be an act of insolvency within the meaning of section 8 the Insolvency Act, 1936 or any equivalent legislation in any jurisdiction to which such Tenant is subject; and/or
- 21.1.8 be unable or deemed to be unable to pay its debts as described in section 345 of the Companies Act, 1973 as read with item 9 of Schedule 5 of the Companies Act, 2008 (or would be deemed to be unable to pay its debts if it were a company which was subject thereto) or any equivalent legislation in any jurisdiction to which such Tenant is subject; and/or
- 21.1.9 give notice in writing to any one of its creditors that the Tenant is unable to pay any of its debts; and/or
- 21.1.10 being a trader, give notice in the Government Gazette in terms of section 34 of the Insolvency Act, 1936 of the sale of the Tenant's business, and is thereafter unable to pay all of its debts;
- 21.1.11 surrender his/her/its estate, be sequestrated, or be placed under administration, business rescue, debt review, curatorship, or any other equivalent proceedings; and/or
- 21.1.12 compromise or attempt to compromise with, or defer or attempt to defer payment of debts owing by it to its creditors generally, or a moratorium be agreed or declared in respect of or affecting all or a material part of its indebtedness; and/or

- 21.1.13 become financially distressed as described in section 128 of the Companies Act, 2008 (or would be financially distressed if it were a company which was subject to the Companies Act, 2008) or any equivalent legislation in any jurisdiction to which such Tenant is subject; and/or
- 21.1.14 the board of directors of the Tenant deliver, or be obliged to deliver, a written notice in terms of section 129(7) of the Companies Act, 2008; and/or
- 21.1.15 the board of directors of the Tenant propose, consider, or pass a resolution for the dissolution, deregistration, liquidation or winding-up of the Tenant in terms of the Companies Act, 2008 or the Companies Act, 1973 (as read with item 9 of Schedule 5 of the Companies Act, 2008), or to place the Tenant under supervision to begin business rescue proceedings in terms of the Companies Act, 2008, or a notice be given that any such resolution will be proposed; and/or
- 21.1.16 an application be made to court for the liquidation or winding-up (whether provisional or final) of the Tenant in terms of the Companies Act, 2008 or the Companies Act, 1973 as read with item 9 of Schedule 5 of the Companies Act, 2008, or to commence business rescue proceedings and place the Tenant under supervision in terms of the Companies Act, 2008; and/or
- 21.1.17 the Master of the High Court issue a certificate in terms of section 346(3) of the Companies Act, 1973 as read with item 9 of Schedule 5 of the Companies Act, 2008, or equivalent provision of the Companies Act, 2008, in relation to an application to the court (as referred to above) for the liquidation and winding-up (whether final or provisional) of the Tenant, to the effect that sufficient security has been given by the applicant; and/or
- 21.1.18 an order be granted (whether final or provisional), for the dissolution, liquidation and/or winding-up of the Tenant or for the placement of the Tenant under supervision and for the commencement of business rescue proceedings or any other equivalent proceedings; and/or
- 21.1.19 have a party take possession of all or a material part of its assets or have a distress, execution, attachment, sequestration or other legal

process levied, enforce or sued on or against all or a material part of its assets; and/or

- 21.1.20 any liquidator, business rescue practitioner, administrator, curator, trustee, debt councillor, judicial manager or the like be appointed in respect of the Tenant or any material part of the Tenant's assets or should the Tenant request any such appointment; and/or
- 21.1.21 any event occurring or circumstance arising which is analogous to any of the events referred to above, including any steps taken for the administration, business rescue, supervision, curatorship, liquidation and winding-up (whether provisional or final) or deregistration of the Tenant or its estate; and/or
- 21.1.22 have any shareholder, member, trustee or beneficiary (being a non-listed company, close corporation or trust) which in any manner disposes of or alienates his/its shareholding, member's interest or rights in the Tenant, or issues or allows the issue of further shares in the Tenant, or changes the trustees or beneficiaries of the trust, or changes the members of a non-profit company (NPC), without the Landlord's prior written consent, which consent shall not be unreasonably withheld; or,
- 21.1.23 be a partnership, and admits any new partner or in any way change the partners of the partnership, unless the new partner/s has first bound himself jointly and severally with the other partners as a Tenant unto the Landlord; (and with application, *mutatis mutandis*, to an incorporated company with unlimited liability), and/or

then and in any of such events, the Landlord shall have the right but not be obliged, without prejudice to and in addition to any other rights which it may have at law and in its sole discretion to the remedies set out in 21.2 below.

- 21.2 Under any one or more of the circumstances described in 21.1 above, the Landlord shall be entitled, without prejudice to its other rights in terms of this agreement or in law, including any right to claim damages, to –

- 21.2.1 cancel this lease, claim damages and retake possession of the leased premises without prejudice to any of its other rights under this lease or at law. In so doing, the Landlord shall be entitled to remove from the premises any goods situate therein, in which event, the Tenant shall have no claim whatsoever either for damages or

otherwise against the Landlord. Any goods so removed from the premises, shall be stored at the cost and risk of the Tenant; and/or

21.2.2 convert this lease into one which the Landlord (but not the Tenant who shall continue to be bound for the full period of the lease) shall be entitled to terminate by giving 1 (one) month's written notice to the Tenant, the remaining terms and conditions being otherwise unaffected, without prejudice to the Landlord's claim for arrear rent and/or damages which it may have suffered by reason of the Tenant's breach or as a result of the premature cancellation;

21.2.3 claim specific performance and damages;

21.2.4 cancel the Tenant's right of occupation to the leased premises, claim damages and retake possession of the leased premises without prejudice to any of its other rights under this lease or at law. In so doing, the Landlord shall be entitled to remove from the leased premises any goods situated therein, in which event, the Tenant shall have no claim whatsoever either for damages or otherwise against the Landlord. Any goods so removed from the leased premises, shall be stored at the cost and risk of the Tenant.

21.3 While for any reason or on any grounds, the Tenant occupies the leased premises and the Landlord disputes its right to do so, then, until the dispute is resolved whether by settlement or litigation, the Tenant (notwithstanding that the Tenant may contend that this lease is no longer in force) shall, without prejudice to its rights:

21.3.1 continue to pay amounts equivalent to the rent and other amounts provided for in this lease on the due dates stipulated herein and the Landlord shall be entitled to accept and recover such payments (whether tendered as rental or otherwise), and such payments and the acceptance thereof shall be without prejudice to and shall not in any way whatsoever affect the Landlord's claim then in dispute. If the dispute is resolved in favour of the Landlord, the payments made and received in terms of this clause shall be deemed to be amounts paid by the Tenant on account of damages suffered by the Landlord by reason of the unlawful occupation or holding over by the Tenant; and

21.3.2 comply with all their further obligations provided for in this lease *mutatis mutandis*.

- 21.4 Notwithstanding anything to the contrary contained in 21.1 above and/or in this lease, the Tenant specifically agrees that in the event of the Landlord having instituted proceedings against the Tenant for an order/judgment, *inter alia* including the cancellation of the lease and the eviction of the Tenant from the premises and/or any other relief (including daily damages from the date of cancellation to the date that the Tenant vacates the premises), it shall, pending a final judgment/order being granted by any Court and/or any settlement agreement signed by the Landlord and Tenant, continue to pay (without prejudice to its rights) an amount equivalent to the rent and other amounts payable in terms of this lease, monthly in advance, on the first day of each month, and the Landlord shall be entitled to accept and recover such payments, and such payments and the acceptance thereof shall be without prejudice to and shall not in any way whatsoever affect the Landlord's claim then in dispute. If the dispute is resolved in favour of the Landlord, the payments made and received in terms of this clause shall be deemed to be amounts paid by the Tenant on account of damages suffered by the Landlord by reason of the unlawful occupation or holding over by the Tenant.
- 21.5 In the event of the Landlord instructing its attorneys to take legal action or other measures for the enforcement of any of the Landlord's rights under this lease, the Tenant shall pay to the Landlord such legal fees and collection charges on an attorney-and-own-client scale (alternatively the highest permissible scale of legal fees) together with collection commission, counsel's fees, auditor's fees, forensic auditor's fees, valuator's fees, architect's fees, quantity surveyor's fees, other consultants, professional or expert's fees and all other reasonable costs incurred by the Landlord in having to take such legal steps as shall be lawfully charged by such persons to the Landlord, on demand made therefore by the Landlord.
- 21.6 Any payments made by the Tenant after legal action has been instituted, shall be appropriated first towards such legal costs as contemplated in 21.5 above.

22 CHANGE OF OWNERSHIP, REBUILDING, RELOCATION, NAME CHANGE AND NEW PREMISES

22.1 Change of ownership

- 22.1.1 Should the Landlord at any time during the currency of this lease 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 so that the purchaser/s thereof acquire/s control of the Landlord, then notwithstanding anything to the contrary elsewhere contained or implied herein, the Landlord or the purchaser/s of such building, or the purchaser/s of the said shares, shall be entitled,

within 6 (six) months after such sale has taken place to terminate this lease on 6 (six) calendar months' notice in writing to the Tenant.

22.1.2 The provisions of 22.1.1 above shall apply, *mutatis mutandis*, to a close corporation, trust or any other legal entity.

22.1.3 Should the Landlord (or the owner of the property, should the Landlord not be the owner of the property), at any time prior to the termination of this lease in any manner dispose of or sell the property or any part thereof, then such disposal or sale shall not -

22.1.3.1 in any way effect this lease;

22.1.3.2 have the effect of releasing the Tenant from this lease;

22.1.3.3 entitle the Tenant to resile from or cancel this lease; and

22.1.3.4 entitle the Tenant to claim damages from the Landlord (or the owner of the property should the landlord not be the owner of the property) or the purchaser of the property or any part thereof as a result of the aforesaid disposal or sale;

22.1.4 The Tenant hereby waives any right of election to resile from or cancel this lease, which the Tenant may have as a result of the Landlord (or the owner of the property should the Landlord not be the owner of the property) selling or disposing of the property or any part thereof.

22.1.5 If the Tenant has provided a guarantee, the Tenant shall upon written request from the Landlord furnish a replacement guarantee reflecting the name of the new owner and/or Landlord as beneficiary within 14 (fourteen) days from date of such request.

22.2 Rebuilding

22.2.1 Should the Landlord at any time during the currency of this lease decide—

22.2.1.1 to demolish the shopping centre or the complex for any reason whatsoever; or

22.2.1.2 to substantially renovate the shopping centre or the complex and/or leased premises for any reason whatsoever,

22.2.2 then, notwithstanding anything to the contrary contained or implied in this lease, the Landlord shall be entitled to terminate this lease on not less

than 3 (three) months' notice given in writing to the Tenant. The decision of the Landlord's architect as to what constitutes substantial renovations to the shopping centre or the complex and/or the leased premises for the purposes of this clause shall be final and binding upon the parties. The Tenant shall not have any claim/s against the Landlord of any nature whatsoever for any loss or damages incurred as a result thereof.

22.3 Relocation

- 22.3.1 ***Save for the initial period***, the Landlord reserves the right at any time ~~before or after the commencement date and~~ upon prior written notice, to relocate the Tenant within the shopping centre or complex to premises, which in the reasonable opinion of the Landlord are reasonably comparable to, the leased premises previously let.
- 22.3.2 Such notice shall be given no less than 3 (three) months prior to the date contemplated in 22.3.3 below and shall contain -
- 22.3.3 The date or approximate date upon which such relocation shall be effected;
- 22.3.4 A description of the relocated premises specifying its approximate size and location in the shopping centre and complex (the "**relocated premises**"); and
- 22.3.5 The net rent and operating costs payable.
- 22.3.6 The net rent and operating costs payable by the Tenant for the relocated leased premises shall be calculated by determining the rent of the leased premises (prior to relocation) as a rate per square meter, and applying such rate to the lettable area of the relocated leased premises.
- 22.3.7 All other terms and conditions of the lease shall remain unchanged and shall continue to be of full force and effect.
- 22.3.8 The Landlord shall use its best endeavours to perform all work reasonably necessary to effect such relocation in a manner so as not to inconvenience the Tenant.
- 22.3.9 The Landlord shall pay to the Tenant all reasonable costs connected with the relocation.
- 22.3.10 The Tenant shall not have any claim/s against the Landlord of any nature whatsoever for any loss or damages incurred as a result thereof.

22.4 Change of name

The Landlord shall be entitled at any time during the currency of this lease, and in its sole and absolute discretion, to change the name of the shopping centre and/or the complex, and the Tenant shall have no claim against the Landlord for compensation, damages or otherwise, by reason of such change of name.

22.5 Occupation of other premises in the complex

22.5.1 Should the Tenant take occupation of any other premises in the complex, in addition to and/or instead of the leased premises, then until such time as a written lease has been entered into in respect of such additional or alternative premises, the provisions of this lease shall apply, *mutatis mutandis*, save that the rent and other costs for such additional or alternative premises shall be the greater of –

22.5.1.1 the net rent and operating costs which would be arrived at by multiplying the square meterage of the additional or alternative premises by the net rent per square metre paid for the leased premises under this lease; and

22.5.1.2 the net rent and operating costs last payable by the previous occupants of the additional or alternative premises, or

22.5.1.3 such other amounts as may have been agreed on by the Landlord and the Tenant in writing.

22.5.2 Clause 22.5.1.3 shall not be construed as a consent by the Landlord to the Tenant to take occupation of any additional or alternative premises in the complex without the Landlord's prior written consent, and shall in no way prejudice the right of the Landlord to eject the Tenant from any premises which the Tenant may occupy without the written consent of the Landlord. the acceptance of any payment by the Landlord from the Tenant in respect of the Tenant's occupation of the alternative premises shall likewise not prejudice or affect the Landlord's rights to eject the Tenant from such premises.

23 LANDLORD'S/TENANT'S DOMICILIUM

23.1 The Parties select as their respective *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement may be served or for the purpose of giving or sending any notices, requests, consents, other documents or communications of

whatsoever nature (collectively referred to as "Notices") provided for or necessary in terms of this Agreement, the following physical and postal addresses and telefax numbers:

23.1.1 The Landlord:

The Address as set out in the Schedule

23.1.2 The Tenant:

The Address as set out in the Schedule

23.2 A Party may by notice to the other Party change its chosen address to another address in the Republic of South Africa, provided that such change shall only become effective on the fourteenth day after receipt of the notice by the addressee.

23.3 Any Notice required or permitted to be given or made in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by telefax.

23.4 Any Notice to a Party:

23.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its chosen postal address shall be deemed to have been received 14 (fourteen) days after posting (unless the contrary is proved);

23.4.2 if delivered by courier service be deemed to have been received by the addressee on the first Business Day following the date of such delivery by the courier service concerned (unless the contrary is proved);

23.4.3 delivered by hand to a responsible person during ordinary business hours at its chosen physical address shall be deemed to have been received on the day of delivery; or

23.4.4 sent by telefax to its chosen telefax number on a Business Day shall be deemed to have been received on the date of transmission thereof (unless the contrary is proved), and if sent on a day other than a Business Day or outside of ordinary business hours on a Business Day, the same shall be deemed to have been received on the first Business Day following such date (unless the contrary is proved).

23.5 Notwithstanding anything to the contrary contained herein, a written Notice actually received by a Party shall be an adequate written Notice to it notwithstanding that it was not sent to or delivered at its chosen postal or physical address or chosen telefax number.

24 EXPERT DECISION/DISPUTE RESOLUTION

24.1 Whenever any dispute or other matter in this Agreement is required to be determined by an expert then, unless otherwise agreed to by the Parties in writing, the following provisions shall apply:

24.1.1 Either Party (**"the Referring Party"**) shall be entitled to refer the dispute for determination by notifying the other Party in writing of its intention to so refer such dispute (**"the Dispute Notice"**).

24.1.2 The Dispute Notice shall include the names of not less than 3 (three) natural persons which the Referring Party proposes for appointment as expert. Unless otherwise specifically stated to the contrary in this Agreement, should the parties fail to agree to an expert within 5 (five) Business Days of the Dispute Notice, the expert shall be appointed, at the written request of any Party (which request shall be copied to the other Party), by the Chairman for the time being of the Johannesburg Bar Council (or its successor).

24.1.3 The hearing shall be held at Johannesburg.

24.1.4 The expert shall act as an expert and not as an arbitrator or a quasi arbitrator.

24.1.5 The Parties will be entitled to make representations to and to appear before the expert who will be obliged to consider such representations and to permit such appearances, subject to such reasonable time and other limits as the expert may prescribe. The expert shall have regard to any such representations but shall not necessarily be bound by them.

24.1.6 The hearing shall be held in accordance with the formalities and procedures settled by the expert, which shall be in an informal and summary manner.

24.1.7 The expert's determination shall be completed as quickly as possible after it is demanded, with a view to it being completed within thirty days after it has been so demanded and the decision of the expert shall be final and binding on the parties, and shall not be subject to an appeal or review, except in the case of a manifest or material error on the part of the expert.

24.1.8 This clause is severable from the rest of the Agreement and shall therefore remain in effect even if this Agreement is terminated.

24.1.9 This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the expert.

24.1.10 The Parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa in respect of the proceedings in this clause and the above Court shall have jurisdiction to enforce any award made by an expert under this clause.

25 JURISDICTION

Either Party may elect to pursue action through the jurisdiction of any Magistrate's Court having jurisdiction for any proceedings arising out of or in connection with this Agreement, even if for a cause of action otherwise beyond the jurisdiction of that court. Notwithstanding the aforementioned either Party may at any time elect to institute any action in the High Court of South Africa.

26 GENERAL

- 26.1 This Agreement constitutes the sole record of the agreement between the parties in relation to its subject matter. No party shall be bound by any representation, warranty, promise or the like not recorded in this Agreement.
- 26.2 No addition to, variation, novation or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 26.3 No suspension of a right to enforce any term of this Agreement and no pactum de non petendo shall be of any force or effect unless in writing and duly signed by or on behalf of the parties.
- 26.4 No indulgence which a party may grant to another party shall constitute a waiver of any of the rights of the grantor unless in writing signed by both parties.
- 26.5 All costs, charges and expenses of any nature whatever which may be incurred by a party in enforcing its rights in terms of this Agreement, including without limiting the generality of the foregoing, legal costs on the scale of attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable on demand from the party against which such rights are successfully enforced and shall be payable on demand.
- 26.6 All provisions in this Agreement are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of this Agreement which is, or becomes, unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, only to the extent that it is so unenforceable, be deemed pro non scripto and the remaining provisions of this Agreement shall be of full force and effect. The parties declare that it is their intention that this Agreement would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.

- 26.7 No remedy conferred by this Agreement is intended, unless specifically stated, to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by a party shall not constitute a waiver by such party of the right to pursue any other remedy available at law.
- 26.8 This Agreement supersedes and cancels all prior agreements, offers and/or arrangements relating to the subject matter hereof.

27 COSTS

- 27.1 Each Party shall pay its own costs of and incidental to the negotiation, preparation and finalisation of this Agreement.
- 27.2 In addition the Tenant shall be obliged to pay a Lease fee for the administration of the lease agreement to Illungile Consultant Services (ICS) for the amount as set out in the schedule which amount shall be payable within 7 (seven) days of ICS requesting payment thereof.
- 27.3 In terms of clause 103 of the Revenue Laws Amendment Act 60 of 2008, the Stamp Duties Act 77 of 1968 has been repealed. As such, stamp duty is no longer payable on lease agreements. Should legislation governing stamp duty be re-enacted after signature date hereof, the full amount of any future stamp duty in respect of this lease, whether at date of execution thereof or any time thereafter, shall be borne and paid by the Tenant, on demand.

28 CONFIDENTIALITY

- 28.1.1 For the purposes of this clause "confidential information" shall mean, without limiting the generality of the term, any information or data relating to the terms and conditions of this lease agreement, proposal, offer or marketing and business information of the Landlord or its agent, including that of its associated and affiliated companies.
- 28.1.2 The Tenant agrees not to disclose, publish, utilize, employ, exploit or in any manner whatsoever to use any confidential information, for any reason or purpose whatsoever without the prior written consent of the Landlord, which consent may be withheld in the sole and absolute discretion of the Landlord.
- 28.1.3 The Tenant agrees that any unauthorised publication or other disclosure of the confidential information may cause irreparable loss, harm and damage to Landlord or its agent. Accordingly the Tenant hereby indemnifies and holds the Landlord harmless against any loss, action, claim, expense, harm or damage of whatsoever

nature suffered or sustained by the Landlord due to a breach by the Tenant of the provisions of the clause.

- 28.1.4 The Tenant shall be entitled to disclose confidential information to regulatory authorities if it is obliged in law so to do.

29 LANDLORD'S HYPOTHEC

- 29.1.1 The Tenant guarantees and confirms that all the items (including, but not limited to, fitting, fixtures, furniture, stock, effects and vehicles) brought to the premises or property or the building of which the premises form part, if applicable when taking occupation and during the duration of the lease, is the Tenant's sole absolute property and free of any encumbrance (Lease, Instalment Sale Agreement, Credit Agreement or property belonging to someone else), and subject to the Landlord's hypothec.
- 29.1.2 The Tenant will be obligated to advise the Landlord by pre-paid registered post within 7 (seven) calendar days of the bringing onto the premises or property of which the premises form part any item which may be subject to any encumbrances or not being the property of the Tenant and, in the absence of such notification, the Tenant will be estopped from claiming and/or alleging that such items are subject to any encumbrance or is not the sole property of the Tenant.
- 29.1.3 In the event of the Tenant being in arrears, in any amount of money, vis a vis the Landlord in terms of the lease, or in the event of the Landlord contending that the Tenant is in arrears in any amount of money in terms of the lease vis a vis the Landlord, but whilst the Tenant is disputing such indebtedness or the amount of such indebtedness, the Tenant:
- 29.1.4 will not entitled to remove any such items from the premises or from the property of which the premises form part;
- 29.1.5 will not allow anyone else to remove any such items from the premises or from the property of which the premises form part;
- 29.1.5.1.1 agrees in addition to (but not without detracting at all from) what is set out in clauses 29.3.3.1 and 29.3.3.2 below, and insofar as may be necessary:
- 29.1.5.1.2 to such items being attached, through court process insofar as same may be necessary to enforce the Landlord's hypothec;
- 29.1.5.1.3 to an interim interdict being granted against the Tenant interdicting it from removing any such items.

30 NOTIFICATION OF MONTHLY TURNOVER

- 30.1.1 Notwithstanding anything to the contrary contained or implied herein, the Tenant shall be obliged to notify the Landlord in a manner as requested by the Landlord, of its monthly net turnover (as described in Annexure H hereto) by no later than the 7th (seventh) day of each calendar month in respect of its net turnover in the previous calendar month.
- 30.1.2 The Tenant agrees to furnish or cause to be furnished to the Landlord a statement of monthly turnover within 10 (ten) days after the end of each calendar month.

31 CONSUMER PROTECTION ACT (“the Act”)

- 31.1.1 The Tenant, which is a juristic person, warrants to the Landlord that its asset value or annual turnover, at the date of signature hereof, shall equal or exceed the threshold determined by the Minister in terms of section 6 of the Act (namely, R 2,000,000.00 (two million rand)) and, as a consequence, this lease is exempt from the provisions of the Act (save for the provisions of section 60 and 61 of the Act).
- 31.1.2 It is recorded that the aforesaid warranty is material to the Landlord in entering into this lease.

THE LANDLORD: By _____ in his capacity as a Director of the Landlord, being duly authorised by resolution of the board of Directors of the Landlord.

SIGNED AT _____ **ON** _____ **20**____

for and on behalf of: **THE LANDLORD**

WITNESSES

1

2

Signature

Signature

Full name and ID number

Full name and ID number

THE TENANT: _____ in his capacity as _____ of the Tenant, being duly authorised by resolution of the _____ of the Tenant.

SIGNED AT _____ **ON** _____ **20**____

for and on behalf of: **TENANT**

WITNESSES

1

2

Signature

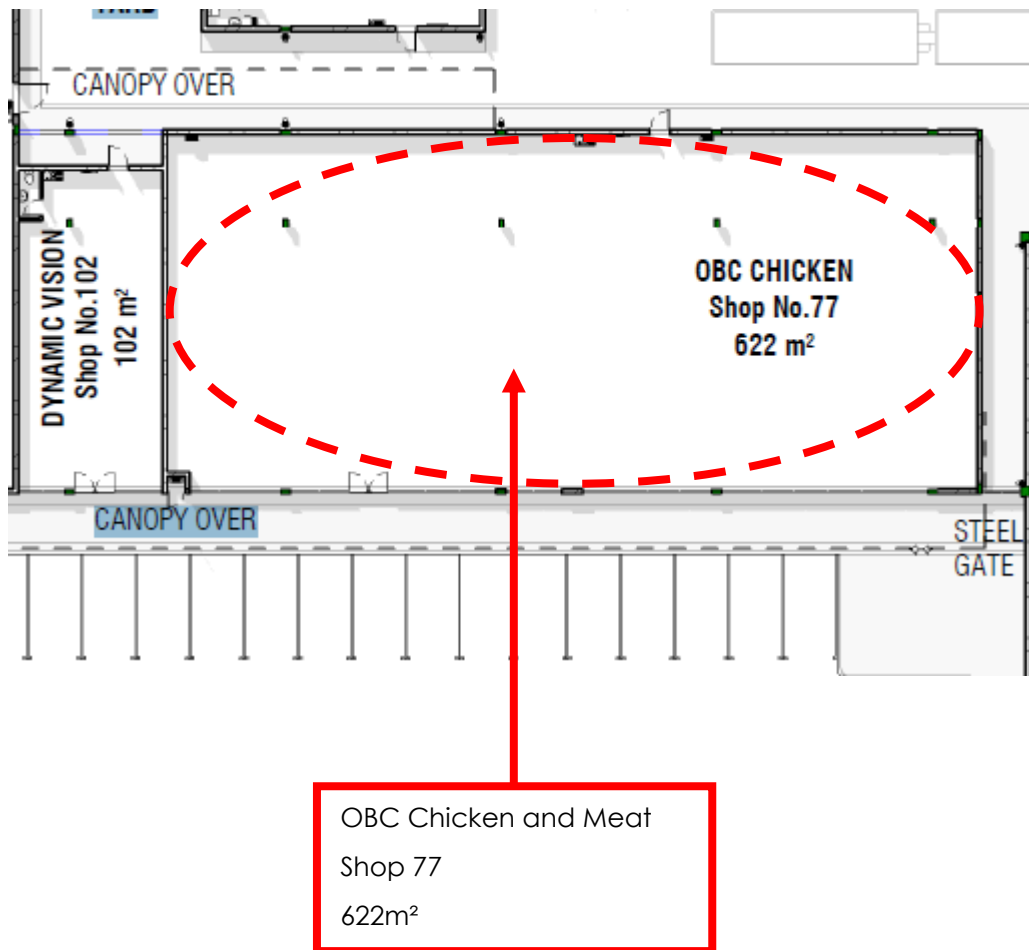
Signature

Full name and ID number

Full name and ID number

ANNEXURE B -

THE LEASED PREMISES PLAN



ANNEXURE C

AREA CERTIFICATE

[TO BE ATTACHED]

ANNEXURE D

PRO FORMA LEASE GUARANTEE (if applicable) / alternatively PROOF OF PAYMENT OF DEPOSIT (TO BE ATTACHED)

Next page (if applicable)
[BANK LETTERHEAD]

ANNEXURE D

PRO FORMA LEASE GUARANTEE

To: [INSERT LANDLORD'S DETAILS] (and its successors in title)
(hereinafter referred to as "the Landlord")

LETTER OF GUARANTEE NUMBER _____

1. The Landlord and [_____] Proprietary) Limited **Registration Number** _____ (hereinafter referred to as "**the Tenant**"), have entered into or are about to enter into a lease agreement, in respect of Leased Premises situated at _____ (hereinafter referred to as "**the Lease**"), for an initial period of _____ (_____) years with an option to renew for a further _____ (_____) years ("**lease period**").
2. The Landlord requires that the Tenant furnish the Landlord with a letter of guarantee (hereinafter referred to as "**the Guarantee**") in respect of the obligations of the Tenant in terms of the Lease for the lease period.
3. At the instance of the Tenant we, the undersigned,and in our respective capacities as and of **Limited, Registration Number** (hereinafter referred to as "**the Bank**"), duly authorised thereto, hold at the Landlord 's disposal and undertake to pay to the Landlord an amount limited to R_____ (_____Rand), plus Value Added Tax thereon, ("**the Guaranteed Sum**") subject to the terms and conditions stated below.
4. Payment shall be made upon receipt by the Bank, at the Bank's address recorded in this Guarantee, of the Landlord's first written demand, which will state that the Tenant is in breach of its obligations under the Lease and despite written demand has failed to remedy the breach within the demand notice period contemplated in the Lease (whether such breach is

occasioned by the insolvency of the Tenant or otherwise) and that accordingly, the Guaranteed Sum, or any lesser portion thereof, is now due and payable.

5. In the event that the Bank is called upon to make payment in terms of this Guarantee and elects not to reinstate the Guarantee for the full Guaranteed Sum, this will constitute a deemed notification of withdrawal of the Guarantee by the Bank and the provisions of clause 5, 6 and 7 shall apply. From the date that the Bank provides notification of its election not to reinstate to the date that either payment is made pursuant to clause 3, or a substitution guarantee is furnished to the Landlord, the Bank's liability under the Guarantee shall be reduced by the amount paid in terms of clause 3.
6. The Bank reserves the right to withdraw from this guarantee prior to the termination of the Lease upon 3 (three) months prior written notice to both the Landlord and the Tenant. Upon receipt of such notice the Tenant shall have one month to provide the Landlord with a guarantee in substitution hereunder ("**substitution guarantee**").
7. Should the Tenant obtain such a substitution guarantee acceptable to the Landlord and its financier, the Bank's obligations in terms hereof shall expire on date of receipt of the substitution guarantee.
8. Should the Tenant be unable to procure such substitution guarantee, the Landlord shall be entitled to call on this Guarantee and the Bank shall then be obliged to make payment of the amount demanded in terms of the Guarantee, limited to –
 - a. the full Guaranteed Sum, in the event that either the Bank has not made a payment in terms of 3 or has made payment but subsequently re-instated the Guarantee, to the full Guaranteed Sum; or
 - b. the Guaranteed Sum less any amount the Bank has paid in terms of 3 in the event that the Bank elected not to re-instate the Guarantee to the full Guaranteed Sum, provided it as provided written notification of its election in terms of 5,

("the **Deposit Amount**")

into a call account held with a registered South African Bank nominated by the Landlord in writing at the time.

9. 3 (Three) months after expiry of the Lease Agreement, the Landlord shall pay to the Tenant the Deposit Amount less any amount it has claimed against the Deposit Amount. The provisions of this clause shall survive termination, cancellation, withdrawal, expiry and lapsing of this Guarantee.

10. This Guarantee is to be surrendered against receipt by the Landlord of the Guaranteed Sum, or the substitution guarantee or on expiry of the notice period contemplated in 5 above, whichever occurs first.
11. Notwithstanding anything to the contrary contained herein, the Bank's obligations hereunder shall be construed as principal and not as accessory to the obligations of the Tenant and this Guarantee is not subject to the Lease or any agreement.
12. The Bank's liability hereunder shall not be reduced or in any way affected by the release or alteration of the terms of the Lease, or by any other arrangements between the Tenant and the Landlord. The Bank's obligations in terms hereof shall not be discharged, by the fact that a dispute may exist between the Tenant and the Landlord and payment under this Guarantee shall be made by the Bank without reference to the validity of the demand or the correctness or otherwise of the amount demanded up to and including the Guaranteed Sum, and without becoming party to any claim or dispute of any nature which any party may allege.
13. Compliance with any demand for payment received by the Bank in terms hereof shall not be delayed.
14. No variations to the terms and/or conditions of this Guarantee are permitted without the prior written agreement of the Landlord, the Tenant and the Bank.
15. The Bank hereby renounces the benefit of the exceptions of excussion and division which might be pleaded against the validity of this guarantee and hereby acknowledges that the full force and effect of these renunciations are fully known to the Bank.
16. This guarantee may be ceded, on the condition that it is ceded in conjunction with the Lease, or ceded in security to the Landlord's financier. The Landlord shall notify the Bank in writing in the event of a cession on the Guarantee.
17. The Bank's obligations under this guarantee shall be restricted to the payment of money only.
18. The Bank accepts that the Landlord's address reflected above is the Landlord's *domicilium citandi et executandi* for all purposes in connection with this guarantee.
19. Any notice sent by the Bank to the Landlord in terms of this guarantee may be sent by registered mail or hand-delivered to the Landlord's chosen *domicilium citandi et executandi* referred to above. A party shall be entitled, by written notification to the other party, to change its domicilium addresses to another address within South Africa as long as it is not a postal address or *poste restante*.
20. This guarantee shall be governed by South African Law and subject to the jurisdiction of South African Courts.

THE BANK: by _____ in his capacity as _____ and
_____ in his capacity as _____ of the BANK, being duly
authorised hereto under and by virtue of a resolution passed by the BANK.

This done and signed at _____ on this the ____ day of _____, in the
presence of the undersigned witnesses:

AS WITNESSES:

Signature

Full Name

Signature

Full Name

For and on behalf of **THE BANK:**

Signature

Signature

ANNEXURE E

RESOLUTION OF THE BOARD OF DIRECTORS OF TENANT

EXTRACT OF RESOLUTION OF DIRECTORS OF

(REGISTRATION NUMBER _____)

HELD AT _____ ON THE _____ DAY OF 20____

IT WAS RESOLVED

That _____
(Identity Number: _____) in his / her capacity as a
_____ to fully sign an Offer to Lease,
Specifications and Lease Agreement for and behalf of the company.

Signed and approved by all Directors of the Company:

Director 1:

Full Names

Signature

Director 2:

Full Names

Signature

Director 3:

Full Names

Signature

Director 4:

Full Names

Signature

ANNEXURE F

SPECIFICATIONS AND TENANT VARIATIONS

[TO BE ATTACHED]