

AGREEMENT OF LEASE

made and entered into by and between

Yetfu (Pty) Ltd

Registration No:
2013/164793/07

(hereinafter called the “Lessor”) of the first part

AND

OBC Group (Pty) Ltd

Registration No:
2000/022255/07
trading as
OBC Chicken

(hereinafter called the “Lessee”) of the Second Part

I / We, the undersigned _____ and _____ (being duly authorised) on behalf of

Company / CC name : _____

Reg. No. / CK No. / ID No.: _____

(hereinafter referred to as "the Lessee")

hereby Offer to Lease from the Lessor certain Premises as described hereunder on the terms and conditions set out in the Schedule, General Conditions and Annexures.

Signature of this offer to lease by the Lessee shall constitute an irrevocable offer to lease by the Tenant which shall be open for written acceptance by the Lessor for a period of 21 (twenty one) days from date of receipt hereof by the Lessor. Only upon written acceptance hereof by the Lessor shall same constitute a binding and enforceable agreement.

IRREVOCABLE OFFER MADE BY LESSEE at _____ this _____ day of

_____.
AS WITNESSES :-

1. _____

2. _____

LESSEE

REPRESENTED BY _____

who warrants being duly authorised thereto by resolution of the Lessee.

OFFER SIGNED AND ACCEPTED BY LESSOR at _____ this _____ day of

_____.
AS WITNESSES :-

1. _____

2. _____

LESSOR

REPRESENTED BY _____

who warrants being duly authorised thereto by resolution of the Lessor

INITIAL HERE

SCHEDULE

1. Parties to the agreement:

Lessor	Yetfu (Pty) Ltd
Lessors domicilium address	47 Murray Street, Nelspruit.
Lessee Company	Name: OBC Group (Pty) Ltd
	Reg Nr: 2000/022255/07
	Trading As: OBC Chicken
	VAT Nr: 4500170958
Lessee addresses:	Postal:
	Physical: 96 15th Road, Randjespark, Midrand, 1685
Lessee domicilium address	96 15th Road, Randjespark, Midrand, 1685
Lessee contact details	Tel: 0861622622
	E-mail: tian@obcgroup.co.za

2. The Premises

Building Name:	Yetfu Centre
Building Address:	12 Currie Street, Nelspruit
Premises:	a certain shop(s) situated in the building measuring approximately 576 m ² (square meters);

Should a plan be attached, the plan only serves to identify the premises and no warranties are given in regard to thereto and, changes to the plan's layout, design and location may occur within the landlords discretion

The premises is to be measured in accordance with the SAPOA method of measurement of commercial and industrial buildings.

Any calculations referred to in this Lease agreement, in which the area is a factor, shall use the shop area as per the above

3. Lease Terms

3.1. Lease Period	3 (Three) Years
3.2. Beneficial Occupation Date:	NA
3.3. Lease Commencement Date:	01-Jul-17
3.4. Trading Date:	01-Jul-17
3.5. Termination Date:	30-Jun-20
3.6. Renewal Period:	3 (Three) years, which option is to be exercised by giving at least 8 months written notice prior to the expiry of the lease. The rentals, turnover rent and escalations are to be agreed to between the parties.
3.7. Gross Monthly Rental	The Gross Monthly rental payable shall be R 73,728.00 per month excluding VAT, which will escalate at 7.00% per annum compounded for the duration of the tenancy

Above rental shall be payable on or before the 1st (first) day of each calendar month.

If there is any variation in the size of the premises, an adjustment shall be made to the agreement by way of an Addendum to be signed by both parties or their duly authorised representatives.

Person Responsible for payment of Rental Invoice:

Contact person:	Fiona van Zyl
Contact Nr:	0861622622
Postal Address:	PO Box 197, Rooihuiskraal Centurion
Physical Address:	
Email Address:	

4. Lessee Liable For:

4.1. Municipal and Utility charges: The lessee shall be liable for all charges for electricity (including the costs of electricity consumed by anything that can be directly attributed to the tenants occupancy and trade), water (including the costs incurred with the recycling of water), refuse (including any charges relative to the recycling of waste), and services consumed in or on the premises, and any levies and charges relating to services provided by any competent authority in respect of the leased premises whether metered or not.

This Clause is to be read in conjunction with Annexure D

Should the lessor or any competent authority decide to implement pre-paid electricity system in the building or premises, the tenant will be obliged to subscribe and to participate in the pre-paid electricity system.

4.2. Assessment Rates: The Lessee shall reimburse and pay monthly to the Lessor its **pro rata share** of rates and taxes levied against the property in any given year in respect of any rates, taxes, fees, charges, levies or any other imposts which may be levied upon the lessor as statutory or other legal levy imposed by the national, Provincial or Local Government or any other governmental body or anybody or entity created by law in respect of the leased premises or building.

4.3. Parking:

4.4. Turnover Rental: In addition to the Gross Monthly Rental, Lessee shall pay to the Lessor a **1.5%** Turnover rental on an annual basis after each financial Year end of the Lessee.

The Lessee shall submit within 90 days after the financial year end of the Lessee a audited turnover certificate that will certify the Lessee's Nett Annual Turnover for the preceeding financial years and will pay together with this certificate the Turnover Rental plus VAT.

The Lessee is to notify the Landlord of the tenants annual financial-end.

4.5. Permitted Use of Premises: As an OBC brand store
 4.6. Lease cost and Stamp Duty: Lease Cost : R 1 500
 Stamp Duty: NA Should stamp duty become payable, it will be for the Lessee's account Payable in full by the Lessee upon date of signature of this agreement.

4.7. Deposit or Bank Guarantee: NA payable/deliverable within 10 days after signature of this agreement.
 Should a Bank Guarantee be supplied the Bank Guarantee will be irrevocable for the full period of the Lease.

4.8. Deed of Suretyship/s: NA

4.9. Administration Levy: Without prejudice to all or any of the Lessor's rights granted hereunder included but not limited to claim interest as recorded below, should the Lessee fail to pay the rental or any other owing amount on the due date the Lessee shall pay the Lessor a levy for late payment in the amount of R 250 Excl VAT per amount due.

4.10. Interest: Interest on overdue amounts shall be charged at 0% above prime rate of interest raised by the Lessor's bankers from time to time, from due date to the actual date of payment compounded.

4.11. Minimum Trading Hours: The parties agree and it is common cause that the minimum business hours are material and is implemented in order to enhance the experience of patrons to the building. The Landlord may vary the trading hours by written notice to the Lessee from time to time.

5. Specifications: The tenant is currently in occupation of the premises.

The Lessee will notify the Landlord within 7 (Seven) days of taking occupation of the premises of any defects in the premises. Should the Lessee not notify the Lessor of any defects the premises would be deemed in good order and condition and the Lessee will have no claim whatsoever for any defect to the premises.

The tenant will return the premises to the Landlord in a reinstated condition to the same condition as the premises was received in on expiry or early termination of the Lease to the Landlord, fair wear and tear accepted.

6. Special Conditions: None

7. Maintenance: The Lessor shall maintain and be responsible for structural repairs and repair the exterior, roof, gutters, down pipes and common areas of the Building, provided that any damage caused thereto is not a result of forceable entry or burglary (or attempted forcible entry and burglary) to the premises or any installation.

The Lessee shall at all times keep and maintain at its own cost the Premises and all parts thereof including (without limiting the generality thereof):

- Repair of all damages of damages caused by or as a result of the Lessee's deliveries to the building
- All Electrical, drainage and sanitary works and installations;
- All Air-conditioning and cooling systems, subject to such equipment being handed over by the Lessor in a good and well maintained condition. The Lessor shall maintain on behalf of the Lessee and recover such costs of services from the Lessee. Should the tenant elect to maintain the Air-conditioning units the tenant will forward to the Landlord the proof of monthly service of such units, which will include minor and major services annually.
- All other fixtures, fittings, installations, works and appurtenances, including but not limited to replacement of geysers, light fittings, ballasts and globes used within the premises.
- All doors, door mechanisms, keys and locks
- All windows (including frames and glazing) and all plate glass;
- All Signage (Within and outside the premises/building);
- Shop Fronts

8. NERSA Regulations Notwithstanding anything else herein provided, and insofar as the National Energy Regulator of South Africa and /or the SABS and /or any other controlling authority has imposed and/or imposes and/or varies any penalty/ies and/or higher tariffs exceeding the electrical consumption limit/s determined by the imposing authority, then and under those circumstances;

9. Relocation Clause NA

10. Entrances and Building

~~LAYOUTS: The Lessor shall have the right at the Lessors sole discretion to change entrances to the building, the building, building layout, parking and access to the property. The Lessee will have no claim in this regard and this Offer To Lease is made with full knowledge and acknowledge hereof.~~

11. VAT All amounts are exclusive of Value Added Tax at 14% or such other rate as promulgated from time to time.

12. Annexes forming part of this Schedule

- "A" - General Terms and Conditions of Lease
- "B" - Resolution By Lessee
- "C" - Deed of Suretyship
- "D" - Other

GENERAL TERMS AND CONDITIONS OF LEASE

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1. DEFINITION AND INTERPRETATION

In this Agreement, unless inconsistent with the context thereof, the following terms and expressions shall have the separate meanings assigned to them:

- 1.1 **"the Lessor"** means the entity as identified in clause 1 of the Schedule.
- 1.2 **"the Lessee"** means the person / entity as identified in clause 1 of the Schedule.
- 1.3 **"the / this Agreement"** and/or **"the / this Lease"** means this Agreement, including the Schedule and any other annexes thereto.
- 1.4 **"Basic Monthly Rental"** means the rental indicated in clause 11 of the Schedule.
- 1.5 **"the Building"** means the building/s erected on the Property as identified in clause 2 of the Schedule.
- 1.6 **"the Business"** means the purpose for which the Premises are to be utilised by the Lessee for the duration of this Agreement as set out in clause 4 of the Schedule.
- 1.7 **"Commencement Date"** means the date upon which this Agreement will commence, as set out in clause 3 of the Schedule.
- 1.8 **"the Common Area"** means shall mean those portions of the Building and the Property not actually let and not intended to be let by the Lessor.
- 1.9 **"Deposit/s"** means the amounts payable by the Lessee as set out in clause 4 of the Schedule.
- 1.10 **"the Gross Monthly Rental"** means the aggregate of the Basic Monthly Rental and Operating Costs indicated in clause 3 of the Schedule.
- 1.11 **"the Lease Period"** means the period as referred to in clause 3 the Schedule.
- 1.12 **"Net Annual Turnover"** means in regard to any period, the net selling price (excluding interest, finance charges and any tax or imposition levied in connection with the sale of goods) of all goods sold and services rendered by the Lessee and/or any licensee, concessionaire or sub-Lessee including all orders taken or received at the Premises, whether such orders be executed at the Premises or elsewhere and of all goods sold and services rendered from the Premises and which have resulted from an order taken or received via the internet site of the Building, the Lessor, its agents or the internet site of the Lessee, provided that each sale on instalment or credit shall be treated as a sale for the full net selling price in the period during which such sale shall be effected, irrespective of when the Lessee shall receive payment (whether full or partial) thereof, minus
 - 1.12.1 any refunds given, credits passed or allowance made on goods to be claimed defective or unsatisfactory (provided that the net selling price of any such goods in respect of which the refund, credit or allowance is given or made shall have previously been included in the Net Annual Turnover of the Lessee);
 - 1.12.2 the net selling price of any goods returned for exchange, provided that the net selling price of the goods exchanged for the returned goods shall have been included in the Net Annual Turnover of the Lessee;

- 1.12.3 any amount reasonably written off during the relevant period as bad debts, provided that should any debts which have been written off as bad debts be subsequently recovered by the Lessee, then the amount or amounts so recovered shall be included in and form part of the Net Annual Turnover of the Lessee for the relevant period during which the recovery of such bad debts has taken place;
- 1.13 “**Operating Costs**” means the total amount expended or payable by the Lessor for the complete and total administration and maintenance of and in order to keep the Property, the Building and the Premises in an acceptable, lettable condition for which the Lessee is liable in the amounts as set out in clause 3 of the Schedule.
- 1.14 “**the Premises**” means the premises let by the Lessor to the Lessee in terms of this Agreement, as identified in clause 9 of the Schedule.
- 1.15 “**the Property**” means the erf on which the Building is situated as identified in clause 2 of the Schedule.
- 1.16 “**the Schedule**” means the Schedule to which this Annexure “A” is attached.
- 1.17 “**Termination Date**” means the date upon which this Agreement will terminate by normal effluxion of time, as set out in clause 3 of the Schedule.
- 1.18 “**Turnover Rental**” means In relation to each period the additional rental payable by the Lessee where such amount is calculated by multiplying the Net Annual Turnover of the Lessee for the year preceding on each anniversary of the Commencement Date of the Agreement by the Turnover Rental Percentage stated in clause 14 of the Schedule, and, if the resultant amount is greater than the Basic Rental excluding any VAT payable for the said year, then such excess plus VAT thereon is to be paid to the Lessor as Turnover Rental;
- 1.19 “**Rates and Taxes and Utility Charges**” means the expenditure for which the Lessee is liable as set out in clause 4 of the Schedule.
- 1.20 Unless inconsistent with the context thereof, words, expressions and rules of interpretation as defined in the Schedule will bear a similar meaning;
- 1.21 A word or expression indicating the singular shall include the plural and vice versa; the male shall include the female and the neuter and vice versa; natural persons shall include legal persons and vice versa.
- 1.22 Clause headings are inserted for convenience only and may not be used in the interpretation of this Agreement.
- 1.23 If any provision in the interpretation clause or in the Schedule or any annexure hereto is a substantive provision conferring rights or imposing obligations on any of the Parties, notwithstanding that it is contained in the interpretation clause or in the Schedule or any annexure hereto, effect shall be given to it as if it was a substantive provision in the body of this Agreement.
- 1.24 When any number of days is prescribed, same shall be reckoned inclusively of the first and exclusively of the last calendar day.
- 1.25 Any clauses which are deleted in this Agreement and which remain legible thereafter shall be regarded as *pro non scripto* in the interpretation and implementation of this Agreement.

- 1.26 In the interpretation of this Agreement, the *contra proferentem* rule of construction shall not apply (this Agreement being the product of negotiations between the Parties), nor shall this Agreement be construed in favour of or against any party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.
- 1.27 Should any clause or portion thereof be regarded as or found to be unenforceable or unlawful, such clause or portion thereof shall, at the election of the Lessor, be severable and the remaining provisions of the Agreement shall remain of full force and effect.
- 1.28 The parties acknowledge that certain Latin terms and expressions have been included in this agreement and the following meanings (as set out in the *Trilingual Legal Dictionary, Hiemstra Gonin*) shall apply:
- 1.28.1 “*contra proferentem*” rule - the rule that words should be interpreted against the stipulator;
- 1.28.2 “*domicilia citandi et executandi*” – domicile of summons and execution;
- 1.28.3 “*in solidum*” – joint and several (liability);
- 1.28.4 “*inter alia*” – amongst other things;
- 1.28.5 “*mutatis mutandis*” – with the necessary changes (in points of detail);
- 1.28.6 “*prima facie*” – at first sight or at first glance;
- 1.28.7 “*pro non scripto*” – as though it had not been written;
- 1.28.8 “*pro rata*” – proportionately or in proportion;
- 1.28.9 “*vice versa*” – the other way round.

2. LEASE PERIOD AND SHOPFITTING

2.1 LEASE PERIOD

- 2.1.1 The Agreement shall be for the Lease Period stated in clause 3 of the Schedule i.e. from the Commencement Date to the Termination Date. However, the Lessee shall be given occupation of the Premises for shopfitting from the Beneficial Occupation Date, as stated in clause 3 of the Schedule, from which date the Premises shall be occupied at the sole risk of the Lessee and upon the terms and conditions of this Agreement.
- 2.1.2 Should the Lessee remain in occupation of the premises (with or without the Lessor's consent) and without concluding a written agreement, if applicable, after the termination date, the lease shall continue on a monthly basis, however, the monthly rental (notwithstanding what is recorded elsewhere in this agreement of lease) shall escalate by 20% (twenty percent) compounded added to the rental payable at the last month of the lease period. The foregoing shall be without prejudice to any rights of the Lessor in terms of this agreement or in law and shall not constitute a tenancy other than on a monthly basis as recorded herein.

2.2 FIT-OUT OF PREMISES

- 2.2.1 The Lessor shall deliver and give occupation of the Premises to the Lessee in its present condition.
- 2.2.2 In the event of the Premises not being ready for shopfitting on the Beneficial Occupation Date for any reason or any cause whatsoever (including but not limited to, the Premises not being completed or an Act of God), then, the Lessor will give the Lessee 30 (thirty) days written notice prior to the Beneficial Occupation Date of such a delay or as many days notice as is reasonably possible under the circumstances indicating the new projected Beneficial Occupation Date.
- 2.2.3 In the event of any delay in the Beneficial Occupation Date, the Lessee shall have no claim against the Lessor, whether for cancellation of the Agreement, damages or otherwise.
- 2.2.4 The Termination Date shall be extended by the period of any delay as described above.
- 2.2.5 The Lessee shall provide the Lessor for its written approval with detail, in writing and in a readable format, of its shopfitting and equipment layout within 7 (seven) days from date of request by the Lessor or its agent.
- 2.2.6 The Lessee agrees to affect the shopfitting efficiently and to cause minimal disruption to the other users of the Building. It is a material term of this Agreement that the Lessee commences, after compliance with this Agreement, with physical and actual shopfitting within 72 (seventy two) hours of the Beneficial Occupation Date, *alternatively* within 72 (seventy two) hours after being given occupation.
- 2.2.7 The Lessee shall ensure that its agents, employees, workmen, contractors, sub-contractors and suppliers, (hereinafter referred to as the "construction team") at all times comply with the instructions of the Lessor's Architects and/or Property Manager and/or other authorised agent, and warrants that all its contractors, sub-contractors and suppliers waive any liens to which they may be entitled. The Lessee shall forthwith and at its own cost repair any damage to the Building and/or Premises arising out of such shopfitting. All rubble resulting from the Lessee installation shall be removed by the Lessee at intervals of not longer than 24 (twenty four) hours, failing which the Lessor shall without prejudice to the other rights the Lessor has under this Agreement, be entitled, but not obliged, to remove same at the Lessee's cost. The Lessee shall ensure that the construction team does not use fire hoses or fire fighting equipment during the fit-out period of the Premises for any other purpose than their intended use. The Lessee indemnifies the Lessor against any loss it might suffer however arising as a result of the Lessee's breach of any of the foresaid undertakings. In addition, and if applicable, the Lessee shall procure signature of the Lessor's main Contractors' Occupational Health and Safety Act certificates by its construction team and ensure that its construction team complies with the Occupational Health and Safety Act especially where shopfitting takes place in the Building while same is fully operational.
- 2.2.8 Any delay on the part of the Lessee completing the shopfitting shall not delay the Commencement Date and rental shall, notwithstanding such delay, become payable from the Commencement Date.

- 2.2.9 The Lessee shall at its cost and prior to the Commencement Date procure an Occupation Certificate, Certificate of Electrical Compliance and or any other license, certificate, consent or grant required to conduct its Business at the Commencement Date from the Premises and maintain such certificate during the currency of the lease.
- 2.2.10 The Premises shall be at the sole risk of the Lessee with effect from the Beneficial Occupation Date. The Lessee shall furthermore be liable for rates and taxes, electricity, water, refuse and sewerage costs consumed within the Premises with effect from the Beneficial Occupation Date.

3. **USE OF PREMISES**

- 3.1 The Lessee shall use the Premises for the purpose as set out in clause 4 of the Schedule and for no other purpose whatsoever.
- 3.2 The Lessor does not warrant and this Agreement is not entered into on the basis that:
 - 3.2.1 the Premises are or will at any time be suitable for the use set out in clause 4 of the Schedule or for any other purpose whatsoever;
 - 3.2.2 the Lessee will be granted any licences, consents, authorities or permits in respect of the Premises for the conduct of any Business or for any other type of use, or that any such licences, consents, authorities or permits will be renewed from time to time;
 - 3.2.3 any other Premises in the Building will not be let for the same or similar purposes.
- 3.3 There shall be no liability on the Lessor to do any work or make any alterations or repairs to the Premises to comply with the requirements of any licensing or other authority.
- 3.4 The Lessor shall not, however, unreasonably withhold its consent to the Lessee doing any such work, repairs or alterations at the Lessee's own cost and expense. The Lessor shall be entitled to require such work, repairs or alterations to be effected by a contractor and in pursuance of plans approved of by the Lessor in writing, under the supervision and control of the Lessor or its architect and the fees of such architect shall be paid by the Lessee.
- 3.5 The Lessee shall be obliged to have the necessary work carried out and completed as expeditiously as possible. The provisions of clause 15 below shall apply to any such work, repairs or alterations.
- 3.6 The Lessee shall not change the advertised and/or trading name of the Business operated in the Premises without the prior written consent of the Lessor.

4. **PAYMENT OF RENTAL**

- 4.1 The Gross Monthly Rental payable by the Lessee to the Lessor during this Agreement is recorded in clause 3 of the Schedule.
- 4.2 The Gross Monthly Rental payable as recorded in clause 3 of the Schedule shall be paid monthly in advance on or before the 1st (first) day of each calendar month of the Lease Period, via Debit Order Authorisation or via Electronic Fund Transfer ("EFT") or

at the Lessor's discretion and/or election, at the address set out in clause 1 of the Schedule or at such other address as the Lessor may notify the Lessee in writing, at all times as per clause 4.8 below, from time to time.

- 4.3 If the Commencement Date is not the 1st (first) day of a calendar month, a pro rata amount of the rental for such period shall be paid together with the rental for the first calendar month after the Commencement Date.
- 4.4 The Lessee shall also be liable to pay Gross Monthly Rental and Rates and Taxes and Utility Charges as per clause 3 and 4 of the Schedule, on a pro rata basis from the Trading Date until the Commencement Date.
- 4.5 All rental and other amounts payable by the Lessee in terms of this Agreement shall be made without demand, free of exchange, bank charges and without any deduction or set off whatsoever.
- 4.6 Any failure by the Lessor to render any statement or the late receipt or non-receipt thereof by the Lessee shall not in any way detract from the Lessee's obligations to effect payment of all amounts due in terms of this Agreement on the due date.
- 4.7 A certificate issued by the Lessor shall constitute *prima facie* proof of any amount outstanding in terms of this Agreement as well as the computation of such amount.
- 4.8 The Lessee acknowledges that the bank account detail of the Lessor is not likely to change. The Lessee will be informed of a change in bank account detail of the Lessor in writing and on a letterhead from the Lessor or its agent and such letter will be sent by registered mail. Prior to the Lessee acting on such letter, the Lessee shall verify the authenticity by calling the Financial Director of the Lessor and confirm such change whereafter the Lessee shall further confirm and/or verify any change in bank account detail in writing, on an official letterhead of the Lessee addressed to the Financial Director of the Lessor and referring to such telephone call and the content thereof. Prior to making payment into the new bank account, the Lessee shall confirm that the Financial Director of the Lessor has received such letter. The risk and liability to ensure that payment of Gross Monthly Rental and other charges due in terms of this Agreement shall remain vested with the Lessee. The Lessee hereby accepts the full risk and liability should any payment be lost, stolen or misappropriated and the Lessee shall immediately make a proper payment in replacement thereof.

5. **TURNOVER RENTAL**

- 5.1 In addition to the rental payable each month, the Lessee shall pay to the Lessor a Turnover Rental.
- 5.2 For the purpose of this Agreement the words "lease year" means a period of twelve consecutive calendar months or any part thereof. The first lease year shall commence on the date on which this Agreement commences if such date is the 1st (first) day of a calendar month; if not, then the 1st (first) lease year shall commence on the 1st (first) day of the month following that in which this Agreement commences.
- 5.3 All transactions originating from the Premises, or any transactions in respect of goods usually sold or services usually rendered at the Premises, or in respect of goods sold and/or services rendered from the Premises and which have resulted from an order taken or received via the internet site of the Building, the Lessor, its agents or the internet site of the Lessee, shall be considered as made and completed from the Premises and shall be included and form part of any calculation of the Net Annual Turnover of the Lessee even though the bookkeeping and payment of any account

may be transferred to another place for collection and even though the actual completion of the transaction or service order and actual delivery of the merchandise may be made from a place other than the Premises. To ensure that the Premises shall produce the maximum volume of turnover, the Lessee agrees that it shall not directly or indirectly divert elsewhere any business, trade or commerce which would ordinarily be transacted in, at or from the Premises.

- 5.4 The Turnover Rental shall be calculated as set out in clause 4 of the Schedule.
- 5.5 The Lessee shall submit to the Lessor on or before the 2nd (second) business day following the end of each calendar month during the subsistence of this Agreement (plus any partial calendar month if this Agreement does not commence on the 1st (first) day of a calendar month), a written statement duly signed by the Lessee and certified by it to be true and correct, showing in reasonably accurate detail the amount of the Lessee's turnover as defined in clause 5.8 below for each day of the preceding calendar month.
- 5.6 Within 90 (ninety) days after each anniversary of its Financial Year, the Lessee shall furnish to the Lessor an audited certificate certifying the Turnover of the Lessee for the year preceding such anniversary, and together with such certificate shall simultaneously pay to the Lessor the amount of the Turnover Rental, if any, by which its payments of the Basic Monthly Rental during the lease year in question fall short of the Net Annual Turnover payable for that lease year. The receipt by the Lessor of any statement of Net Annual Turnover or any payment of Turnover Rental for any lease year shall not bind it as to the correctness of such statement or payment.
- 5.7 If the Lessee is a legal entity, the audited turnover certificate will be issued by the legal entity's auditor or a person of similar standing such as the accounting officer of a close corporation. If the Lessee is a business trust or sole proprietor, the audited turnover certificate will be issued by a person suitably qualified and registered with the South African Institute of Chartered Accountants or its successor in title. Each statement of Net Annual Turnover shall clearly separate all the items comprised in the definition of Net Annual Turnover of the Lessee as set out in clause 1.12 of the General Conditions of the Lease.
- 5.8 "Turnover" shall mean and include:
 - 5.8.1 The aggregate amount of actual selling prices (including any deposits and installments but excluding any VAT and charges made by the Lessee over and above the selling prices as interest, finance charges and/or accommodation charges made in respect of sales on terms) of all goods sold, and the charges for all services rendered or performed and rentals received for goods let by the Lessee in, at on or from the Premises whether made in cash and/or credit or otherwise and including (but without limiting the generality of the foregoing) all sales, leases and services;
 - 5.8.2 the orders which originate at or are received or accepted or recorded by the Lessee in the Premises but delivery or performance thereof is made from or at any place other than the Premises, or vice versa;
 - 5.8.3 the orders made or rendered by means of mechanical or other vending devices in the Premises;
 - 5.8.4 the orders made or rendered as a result of transactions originating upon the Premises;

- 5.8.5 the orders which the Lessee in the normal or customary course of its Business would credit or attribute to the Lessee's Business upon the Premises or part thereof; and
- 5.8.6 all monies or other things of value received by the Lessee from the Lessee's Business in or on the Premises and sales not included in the foregoing but made or performed in such manner as to deprive the Lessor of the benefit thereof.

The following shall be excluded from "Turnover":

- 5.8.7 the transfer or exchange of goods between the Lessee and any of its branches, subsidiaries, associates, fellow subsidiaries, and/or holding company where such transfers or exchanges are made solely for the convenient operation of the Lessee's Business and not for the purpose of sales which have been made at, in or from the Premises, nor for the purpose of depriving the Lessor of the benefit of sales that otherwise would have been made at, in or from the Premises; and
 - 5.8.8 returns to manufacturers, wholesalers or suppliers; and
 - 5.8.9 sales of fixtures after use thereof in the conduct of the Lessee's Business in the Premises; and
 - 5.8.10 any amount received by the Lessee for the sale of stock in trade to a cedent of the Lease where the cession of the Lease to such cedent has been approved by the Lessor, and
 - 5.8.11 cash or credit refunds made upon transactions included with turnover, not exceeding the selling price of goods returned by the purchaser and accepted by the Lessee.
- 5.9 The Lessee shall keep and maintain at all times during the currency of the Agreement full and accurate accounting records and other pertinent data from which the Turnover in respect of each year can be ascertained and determined and, in particular, shall at all times during the currency of the Agreement keep on the Premises and maintain in good operating condition a cash register with tape or other means for adequately **and efficiently** recording sales and shall ensure that all sales are recorded thereby.
 - 5.10 The Lessee shall keep and preserve during and for at least 3 (three) years after the end of each lease year, all sales slips, dockets, hire purchase agreements, bank deposit records, tax returns and other evidence of Net Annual Turnover for such years. The Lessor and its agents shall be entitled to inspect the Lessee's accounting records and other pertinent data relating to the calculation of the Net Annual Turnover and shall have the right to take reasonable copies and extracts therefrom. The Lessor shall be entitled to disclose the Lessee's turnover data to any third person should it be necessary for the purpose of raising finance or in the event of the possible sale of the Building or any share of the Lessor's capital.
 - 5.11 The Lessor shall have the right at any time and from time to time to cause its internal and/or external auditors to audit all the books of account, statements, documents, records, returns, papers, files and other evidence of the Lessee relating to Net Annual Turnover. Should the Lessor institute its audit, this shall include all general audit procedures together with on site inspections. Such audit shall be conducted during normal business hours at the Premises or any site as agreed upon by the Lessor and Lessee.

- 5.12 In the event of the Lessor having caused an internal and/or external audit to be made and the Net Annual Turnover shown by the Lessee's annual audited certificate referred to in 5 hereof being found to be understated by more than three per centum (3%), then the Lessee shall pay to the Lessor the cost of any such audit plus any Turnover Rental or extra Turnover Rental due, plus interest on the outstanding amount at the Prime Rate, calculated as from due date, being 60 (sixty) days after each anniversary of the Commencement Date of the Agreement, to date of payment.
- 5.13 At all times during the course of the Lease Period, the Lessee shall supply on demand to the Lessor the number of customer transactions effected during a specified period together with the Turnover for this same period.
- 5.14 The provisions of clauses 5.5 and 5.6 above shall apply *mutatis mutandis* irrespective of whether the Lessee is paying Turnover Rental or not.

6. FEES, IMPOSTS, TAXES AND UTILITY CHARGES ETC OTHER THAN RENT

- ~~6.1~~ The Lessee acknowledges that the Premises will be separately metered for the consumption of electricity and water supplied from the Beneficial Occupation Date and will be for the account of the Lessee. ~~In the event of the Premises not being separately metered, electricity and water will be charged on a pro rata floor area basis at the relevant rate as if supplied directly to the Lessee by the relevant authority.~~
- 6.2 In addition to rental, the Lessee shall pay on demand without set-off or deduction, on a monthly basis on or before the 1st (first) day of each calendar month of the Lease Period:
- 6.2.1 in respect of the Premises:
- 6.2.1.1 the cost of all electricity, including but not limited to, electrical maximum demand charges, basic electrical charges, connection fees and all other electrical consumption, including but not limited to the Lessee's signage illumination, and water consumed by it including meter reading charges, ~~if metered and if not metered, the Lessee's Pro-Rate share of such charges;~~ This clause is to be read in conjunction with Annexure "D"
 - 6.2.1.2 the Lessee's Pro-rata Share of sanitary fees, sewerage or effluent charges or if calculated by the Local Authority on any method relating to the consumption of water on the Premises, then on such basis;
 - 6.2.1.3 the Lessee's Pro-rata Share of refuse removal whether or not such services are utilised by the Lessee, provided that if the volume of refuse generated by the Lessee is higher per square metre of the space occupied than the average, the calculation will be weighted to take account thereof;
 - 6.2.1.4 the total, alternatively the Lessee's share, of water and electricity consumed by and if applicable, the maintenance cost of the air-conditioning plant serving the Premises. The Lessee's share of costs shall be calculated as the area of the Premises expressed as a percentage of the total area served by such air-conditioning plant serving multiple premises. The Lessee's share of such maintenance costs shall be certified by the Lessor's mechanical engineer, if required;

- 6.2.1.5 the Lessee's Pro-rata Share of electricity and water consumed by the dedicated air-conditioning units servicing the Premises;

~~6.2.2 in respect of the Common Areas:~~

- ~~6.2.2.1 the Lessee's Pro-rata Share of electricity, water and meter reading charges;~~

- ~~6.2.2.2 the Lessee's Pro-rata Share of cleaning and signage levy;~~

6.2.3 in respect of other charges:

- 6.2.3.1 the Lessee's Pro-rata Share of municipal charges and/or utilities and any increases therein;

- 6.2.3.2 the Lessee's Pro-rata Share of municipal Assessment Rates and taxes and/or any increases therein as recorded in clause 4 of the Schedule above.

- 6.3 Should the Local or any other responsible authority or supplier impose any new form of tax or levies in respect of the Building, then the Lessee shall pay to the Lessor the Lessee's Pro-rata Share thereof.

- 6.4 In the event of any interruption of any services or facilities or common services or facilities, or should any such services and conveniences or equipment become unusable, the Lessee shall not be entitled to a reduction of the monthly rental payable in terms of this Agreement, or withhold or defer payment of the monthly rental or have any claim of whatsoever nature against the Lessor or its agents, and the Lessee may furthermore not cancel this Agreement.

- 6.5 The Lessor shall be entitled to recover from the Lessee, the Lessee's Pro-rata Share of the Lessor's monthly instalment payable to a City Improvement District Levy, should such an organisation exist or be formed.

- 6.6 The Lessor shall be entitled to recover from the Lessee, the Lessee's share of the electrical and/or water Deposit payable to the local council or service provider. This amount shall be repaid without interest to the Lessee upon termination of this Agreement, minus any amounts outstanding in respect of electricity or water consumption as recorded in clause 6.1 above.

- 6.7 If the Lessor is entitled in terms of any legislation or regulation or related statutory requirement promulgated from time to time, to recover utility costs of whatsoever nature from the Lessee, then the Lessor shall be entitled to recover and the Lessee shall be obliged to pay those costs at the tariffs prescribed from time to time. Should any future legislation introduce a penalty or an extra charge or levy on:

- 6.7.1 electricity and/or water consumption based on usage of electricity and/or water or as directed in such legislation;

- 6.7.2 initiatives, guidelines and/or regulations and/or any similar imposition which the Landlord is obliged to spend in order to make the Premises and/or Building and/or Property more environmentally friendly in order to reduce the carbon footprint of the Premises and/ or Building and/or Property;

- 6.7.3 necessary measures implemented by the Landlord to safeguard the Premises and/or Building and/or Property in respect of the installation of generators or emergency electricity supply (if applicable);

then the Lessor shall be entitled to recover such penalty or extra charge or levy from the Lessee if such Lessee's usage of electricity and/or water results in a penalty or extra charge or levy. A certificate issued by the Lessor shall constitute *prima facie* proof of the Lessee's liability and the amount stated therein.

- 6.8 Should the Lessee fail to pay the charges for electricity and/or water within 7 (seven) days of written demand, then, without prejudice to any other rights it may have, the Lessor shall be entitled to terminate the supply of utility services to the Lessee without further notice, and shall not be liable for any damages, including consequential damages, that may be sustained by the Lessee.
- 6.9 Should the Lessee pay the charges for electricity and/or water directly to the relevant authority, the Lessee shall provide the Lessor with copies of such proof of payment on a monthly basis by the 7th day of the month.
- 6.10 The Lessee shall contribute towards the Marketing Costs of the Shopping Centre as per the Schedule and shall pay to the Lessor each month as from the commencement date and together with the rental the amount stipulated in the Schedule, which amount shall be applied towards the promotion of the Centre as determined by Management, plus an amount equivalent to the value added tax payable at the prescribed rate from time to time by the Lessee.

In addition to the contribution to be made pursuant to the above, the Lessee shall further be obliged to advertise its business in the Shopping Centre in accordance with strategies devised by the Lessor or its representatives from time to time and in devising such strategies, the Lessee undertakes to participate should the Lessor consult with the Lessee in this regard.

7 APPROPRIATION OF PAYMENTS

The Lessor shall be entitled in its sole and absolute discretion to appropriate and/or re-appropriate any amounts received from the Lessee towards the payment of any rent or other amounts owing by the Lessee to the Lessor.

8 AREA OF PREMISES

- 8.1 If required by the Parties, the architect of the Lessor shall specify in a written certificate, the area in square metres of the Premises. Such certificate shall be based on the SAPOA standard method of measuring floor areas in commercial and industrial buildings and shall be used in calculating the Pro-Rata Share and shall be final and binding on the Lessor and the Lessee. Any discrepancy between the area so measured and the area stated in clause 2 of the Schedule shall not entitle the Lessee to cancel this Agreement.
- 8.2 If the Lessee requested the area of the Premises to be re-measured, the Lessee shall be liable for the cost of such re-measurement of the area if the Lessor's architect determines that the area of the Premises is correct alternatively differs by less than or equal to five percent (5%) from the area stated in clause 2 of the Schedule.

- 8.3 The re-measured area of the Premises (if applicable) shall not result in any amendment of clauses 3 and/or 4 of the Schedule.

9 DEPOSIT

- 9.1 The Lessee shall within 15 (fifteen) days prior to Beneficial Occupation Date pay the Deposit stated in clause 4 of the Schedule.
- 9.2 The Lessor shall have the right, subject to any Law in force for the time being, but otherwise in its unfettered discretion, at any time and from time to time to appropriate the whole or any portion of the Deposit paid by the Lessee in terms of clause 18 of the Schedule towards the payment of any amounts payable by the Lessee to the Lessor, provided that should the whole, or any portion of the Deposit be so appropriated by the Lessor at any time, the Lessee shall be obliged forthwith to reinstate the Deposit to its original amount and provided further that should any liability of the Lessee hereunder, including any claim for damages which the Lessor may have, not, for any reason, have been ascertained at the expiration or earlier termination of this Agreement, or any extension thereof, the Lessor shall be entitled to retain the amount or balance of such Deposit for the time being, pending the due ascertainment of the amount in question and set-off the Deposit against such amount once ascertained.
- 9.3 The amount of the Deposit shall be repaid to the Lessee no sooner than 90 (ninety) days (but, within a reasonable time) after the date of termination of this Agreement and only after the provisions of clause 9.2 have been complied with.
- 9.4 In the event of the Lessor consenting to any of the transactions referred to in clause 12 of this Lease the Deposit shall not be refunded to the Lessee until such time as the other party to any of the said transactions, if required to do so, has paid his Deposit.
- 9.5 The interest on the Deposit will accrue to the Lessor.
- 9.6 Should there be an increase in the Lessee's consumption of water and electricity, the Lessee shall pay to the Lessor an additional deposit in terms of water and electricity consumption as determined by the Lessor based on the Lessee's average consumption for a period of (6) six months preceding the date of such request to increase the deposit.

10 SURETYSHIPS

As security for the due performance by the Lessee to the Lessor of all its obligations in terms of or arising out of this Agreement, the Lessee will also procure the signing of the suretyship annexed hereto as Annexure "C" by all the members/directors/trustees (as the case may be) of the Lessee, as sureties and co-principal debtors ("the additional sureties").

11 LESSEE'S GENERAL OBLIGATIONS

- 11.1 The Premises are let subject to the terms and conditions of the Title Deed and zoning of the Property of which the Premises form part and subject to all relevant statutory requirements and provisions and the Lessee undertakes at its own cost to comply with such requirements which affects the Business, or as required for the Building or the Premises.
- 11.2 The Lessee shall:

- 11.2.1 at all times ensure that no nuisance emanates from the Premises and the Lessee shall be liable for any misconduct, misbehaviour or damage caused by itself or its employees, contractors, clients, visitors, occupants, invitees or agents;
- 11.2.2 comply with all laws, by-laws and regulations relating to Lessees or occupiers of business premises, or affecting the conduct of the Business in the Premises. The Lessee shall not contravene or permit the contravention of any of the conditions of title under which the Premises are held by the Lessor.
- 11.2.3 not store or leave or permit the storage or leaving of any goods outside the Premises in passages, lifts or on the landing of the Building or elsewhere on the Property, nor in the hallway, stairs, parking areas, gardens or any other part of the Common Area;
- 11.2.4 not overload the floors, walls or structure of the Premises and/or the Building and not bring any unreasonably heavy article into the Premises without the Lessor's prior written consent;
- 11.2.5 clean the exterior of its shopfronts and advertising signs and keep the Premises (and any back of house area, if applicable) in a good, clean and well maintained condition. To this extent, the Lessee shall at its cost and upon demand provide the Lessor with a monthly report on pest / rodent control implemented in the Premises. Should the Lessee fail to adhere to the provisions of this clause 11.2.5, the Lessor shall be entitled to attend to such cleaning and recover such cost from the Lessee, which costs shall be payable upon demand;
- 11.2.6 at all times ensure that shop premises are adequately stocked and properly staffed and shall not in any manner obscure or allow shop windows to be obscured;
- 11.2.7 subject to any statutory restrictions, keep the Premises open continuously during minimum business hours as stipulated by the Lessor in writing from time to time;
- 11.2.8 not display, sell merchandise, allow cards, tables, trestles, chairs, signs, devices or any other objects to be stored or to remain outside the Premises;
- 11.2.9 not permit the accumulation of refuse in or outside the Premises, save in refuse bins provided for that purpose; all refuse shall be kept in the kind of containers specified by the Lessor in those positions indicated by the Lessor and shall be prepared for collection in the manner and at the times and places specified by the Lessor;
- 11.2.10 not overload and/or interfere with electrical installations in the Premises or the air-conditioning installation or equipment and not affix any electrical fittings and/or generators other than those approved by the Lessor, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld;
- 11.2.11 install and maintain, at its own cost, such fire extinguishers in the Premises as may be required in accordance with the specifications of the relevant department of the local authority having jurisdiction;
- 11.2.12 should the nature of the Lessee's activities in the Premises be such as to invalidate or transgress (either wholly or partially) the certificate of occupancy

issued to the Lessor in terms of the National Building Regulations and Building Standards Act, 103 of 1997 (as amended) in respect of the Building or the Premises, or any of the provisions of the said Act or any approval granted in terms thereof, immediately cause such to be rectified, at the Lessee's own cost and expense;

- 11.2.13 not solicit, or canvas for business in the Common Area (including the parking area) and not distribute any pamphlets, hand bills or other advertising matter on motor vehicles parked in the parking area or in any other part of the Common Area;
- 11.2.14 not hold or permit the holding of sales by public auction in or upon the Premises, the Building or the Property without the Lessor's prior written consent;
- 11.2.15 not allow or permit any person/s to sleep or reside at the Premises;
- 11.2.16 provide adequate security for the Premises, at the Lessee's sole cost and responsibility. Such security must co-operate at all times with the Lessor's appointed security service provider (if any) for the Building. The Lessee shall also be responsible for the management of cash to and from the Premises and hereby indemnifies the Lessor against any claims of whatsoever nature as a result of any third party collecting cash from the Premises and whilst in the Building and on the Property. The Lessee shall ensure that any third party collecting cash from the Premises comply with the Lessor's rules and regulations relating thereto;
- 11.2.17 comply with and not contravene or permit the contravention of all applicable laws, by-laws and regulations (which regulations shall without limiting the generality thereof include the National Building Regulations and SABS codes, Environment Conservation Act No. 73 of 1989, the National Environmental Management Act No. 107 of 1998, the Hazardous Substances Act No. 15 of 1973, the Atmospheric Pollution Prevention Act No. 45 of 1965, the National Water Act No. 36 of 1998, and the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993), especially, but not limited to those relating to the Lessees or occupiers of business premises or the conduct of any business carried on in the Premises. The Lessee shall not contravene or permit the contravention of any of the conditions of title under which the Property is held by the Lessor or any of the provisions of the Town Planning Scheme applicable to the Property and not do or cause or permit to be done in or about the Premises anything which may be or cause a nuisance or disturbance to invitees or other occupants of the Building or occupiers of neighboring premises. Nothing in this clause shall entitle any Lessee or person to oblige the Lessor to take action in terms of this sub-clause nor shall any Lessee or occupier derive any rights from the provisions of this clause 11.2.17;
- 11.2.18 ensure that all activities on the Premises comply in all respects with the Occupational Health and Safety Act No. 85 of 1993 (as amended) (or its successor) (this/the Act)) and the regulations found thereunder. The Lessee confirms that with effect from the Fitting Out Date or Commencement Date (whichever is the earlier) of this Agreement it has acquired and assumed full control in respect of the use of the Premises for purpose of the Act. The Lessee hereby indemnifies the Lessor or any duly appointed agent against any claims arising from the Lessee's non-compliance with the provisions of this Act in respect of the Premises;

- 11.2.19 as the user of the electrical installations in the Premises, shall be responsible for ensuring compliance with the Electrical Installations Regulations of the Occupational Health and Safety Act, 1993 (as amended);
 - 11.2.20 not contravene or allow the contravention of the Tobacco Products Control Act 83 of 1993 (as amended) (including regulations thereunder) by members of its staff or any person on the Premises. The Lessee further indemnifies and holds the Lessor harmless against any penalty imposed by any local, provincial, national or other authority as a result of the Lessee's failure to comply with the provisions of such Act and/or the regulations;
 - 11.2.21 be liable, at its own cost, to apply and arrange for the installation of its own telephone and data lines.
- 11.3 The Lessee:
- 11.3.1 indemnifies and holds the Lessor harmless against any protest, picketing, strike, unlawful occupancy, nuisance and disturbance carried out by any employees and/or third party/parties on the Premises and/or in the Building directed to or relating to the Lessee;
 - 11.3.2 undertakes to immediately inform the Lessor in writing of any industrial action and/or process where an order is sought or applied for in terms of which industrial action would be allowed in any location other than the Premises for example on the Property or in the Building. The Lessee shall not willfully agree to and shall oppose any application in terms of which any industrial action would be allowed in any location other than the Premises for example on the Property or in the Building;
 - 11.3.3 undertakes to use its best endeavours to limit the noise levels and nuisance caused by any industrial action by its employees or directed at the Lessee;
- 11.4 If the Lessee is a restaurant or fast food outlet:
- 11.4.1 the Lessee will install and maintain an extraction system in the food preparation area with filters, and shall maintain these filters, to reduce odours and smoke to a minimum, together with a grease trap or similar equipment leading to the drainage in the Premises, and the Lessor will have the right to order the Lessee, at the Lessee's cost, to change any system to meet the requirement of any authority, including but not limited to the Department of Agriculture, Conservation and Environment. In addition to the aforementioned, the Lessee will install, use, operate and maintain energy saving equipment by suitably qualified technicians in compliance with the relevant legislation;
 - 11.4.2 the Lessee acknowledges that it may be subject to a hygiene inspection similar to the hygiene inspection conducted by the Department of Health at similar outlets, on such intervals at the Lessor may determine in its sole discretion by an independent service provider appointed by the Lessor from time to time;
 - 11.4.3 the Lessee shall participate in any such health, rodent or hygiene audits undertaken in respect of food operations conducted from the Premises and the Lessee shall be obliged to contribute to the cost of these inspections as well as any cost incidental to the implementation of such audits. The Lessee shall furthermore at its own cost carry out in the Premises any remedial work or improvement/s brought to light by such audit and failure to do so will constitute a material breach of this Lease;

- 11.4.4 the Lessee shall comply with the Lessor's recycling initiatives implemented from time to time, including but not limited to separation of waste and waste disposers.

12 SUB-LEASE, CESSION AND TRANSFER OF CONTROL

12.1 The Lessee shall not:

- 12.1.1 cede, assign, transfer or encumber any of its rights in terms hereof; or
- 12.1.2 sublet or grant possession or occupation, of the whole or any part of the Premises, to any other person, in whatsoever capacity without the prior written consent of the Lessor being obtained, and should the Lessor so consent, then upon and subject to such terms and conditions as the Lessor in the Lessor's sole and exclusive discretion deem fit.

12.2 If the Lessee is:

- 12.2.1 a company whose shares are not listed on a recognised stock exchange, no shares therein shall be transferred from its shareholders, nor may any shares be allotted to any person other than the then existing share holders, without the Lessor's prior written consent, which consent in the case of an allotment or transfer of shares which will still leave control of the Lessee with the then existing shareholders or of a transfer of shares to a deceased shareholder's heirs, shall not be unreasonably withheld; or
- 12.2.2 a close corporation, no member's interest therein shall be transferred in whole or in part from its members without the Lessor's prior written consent which consent in the case of a transfer of members interest which will still leave control of the Lessee with the then existing members or of a transfer of members interest to a deceased member's heirs, shall not be unreasonably withheld; or
- 12.2.3 a partnership, no partner's share therein shall be transferred in whole or in part from any of the partners without the Lessor's prior written consent, which consent in the case of a transfer of a share which will still leave control of the Lessee with the then existing partners or of a transfer of a share to a deceased partner's heirs, shall not be unreasonably withheld; or
- 12.2.4 a trust, the then existing trustees or beneficiaries shall not be replaced nor shall additional trustees or beneficiaries be appointed, without the Lessor's prior written consent, which consent in the case of the appointment of additional trustees or beneficiaries which will still leave control of the trust with the then existing trustees, or of the replacement of a trustee or beneficiary who has died or of a trustee who has become incapable of legally being a trustee, or of a transfer of a share in the trust capital to a deceased beneficiary's heirs, shall not be unreasonably withheld.

12.3 Any transfer or allotment of shares or transfer of the whole or any part of a member's interest or transfer of the whole or any part of a partner's share or the replacement or appointment of additional trustees, as the case may be, effected without the consent of the Lessor in terms of clause 12.2, shall constitute a material breach by the Lessee of the terms of this Agreement.

12.4 The receipt by the Lessor of rental or any other payment from any party other than the Lessee shall not be deemed to be consent by the Lessor to any of the transactions

referred to in this clause 12 nor relieve the Lessee of any of its obligations in terms of the Lease.

- 12.5 Should the Lessee anticipate the possible sale of its Business or any portion thereof, and **prior** to entering into or concluding any Agreement with a potential purchaser, the Lessee shall notify the Lessor in writing, which notice shall contain the following minimum information:
- 12.5.1 The name and identity number of the potential purchaser;
 - 12.5.2 The name and registration number of the proposed purchaser in the event of a juristic person together with financial statements for previous financial year, with a consent for financial information duly signed;
 - 12.5.3 The proposed sureties, their identity numbers as well as asset and liability statement/s, with a consent for financial information duly signed;
 - 12.5.4 The experience, curriculum vitae and/or résumé of the potential purchaser of any individuals that will conduct the Business as well as proof of fixed assets (if any);
 - 12.5.5 The business plan of the Business to be conducted from the Premises;
 - 12.5.6 The amount of Lessee installation allowances that was granted to the Lessee by the Lessor;
 - 12.5.7 A copy of the proposed Agreement of Sale;
 - 12.5.8 The surety(ies) to this Agreement shall remain liable, and where necessary shall be resigned to record their liability for the duration of the unexpired portion of the Agreement, despite and notwithstanding an approval of the sale of the Business;
 - 12.5.9 The Lessor will retain the Deposit paid by the Lessee as recorded in clause 18 of the Schedule.

13 **SIGNAGE**

- 13.1 The Lessee shall not write, affix or erect or permit to be written, affixed or erected any sign, signboard or writing on the exterior or interior of the Premises or on the windows of the Premises or elsewhere on the Building or upon the Property without the prior written consent of the Lessor.
- 13.2 All such signage shall comply with the signage criteria laid down by the Lessor from time to time and shall be subject to the prior written approval of the Lessor and furthermore, also comply with any laws, regulations and by-laws relating thereto, all at the Lessee's costs.
- 13.3 The parties specifically record and agree that the Lessor shall have the right at any time or times during the currency of this Lease or any renewal thereof to change the signage criteria should circumstances so warrant, in the Lessor's exclusive discretion.
- 13.4 The Lessee undertakes to remove all signs, signboards and writings at the expiration or earlier termination of this Agreement, and to make good any damage caused thereby to the Premises, the Building or the Property at its own expense and to the satisfaction of the Lessor

14 MAINTENANCE AND REPAIRS

- 14.1 The Lessor shall maintain and be responsible for structural repairs and repair the exterior, roof, gutters, down pipes and Common Areas of the Building, provided that any damage caused thereto is not as a result of forcible entry or burglary (or attempted forcible entry or burglary) to the Premises or any installation by the Lessee or its agent (e.g. air-conditioning or extraction systems), in which event, the Lessee shall be obliged to repair such damages to the Lessor's satisfaction.
- 14.2 The Lessee shall at all times keep and maintain at its own cost the Premises and all parts thereof, including (without limiting the generality thereof):
 - 14.2.1 repairing all damages caused by or as a result of the Lessee's deliveries to the Building (including but not limited to gates, fences, structures, walls);
 - 14.2.2 all electrical, drainage and sanitary works and installations;
 - 14.2.3 all air-conditioning systems and cooling systems, subject to such equipment being handed over to the Lessee by the Lessor in a good and well maintained condition. It is accepted that the remaining equipment and installations will be subject to the contents of clause 14.3;
 - 14.2.4 all other fixtures, fittings, installations, works and appurtenances, including but not limited to replacement of geysers used within the Premises;
 - 14.2.5 all doors, door mechanisms, keys and locks; and
 - 14.2.6 all windows (including frames and glazing) and all plate glass;
 - 14.2.7 all signage (within and outside the Premises and/or Building).
- 14.3 Should any electrical installations and/or work be conducted, the Lessee shall ensure that a suitably qualified and registered electrician have attended to such work and the Lessee shall provide the Lessor with a Certificate of Electrical Compliance and maintain such certificate throughout the duration of the Lease.
- 14.4 The Premises are deemed to be in good order and condition at the occupation date and save to the extent that they are not in such condition and the Lessee records the defects by written notice given to the Lessor with 14 (fourteen) days from the said date.
- 14.5 The Lessee shall:
 - 14.5.1 use the Lessee's best endeavours to prevent any blockage or obstruction of any sewerage or water pipes or drains in or used in connection with the Premises and at the Lessee's own cost remove any such blockage or obstruction, failing which the Lessor will arrange for such blockage or obstruction to be removed and recover the cost from the Lessee, which cost shall be payable upon demand. If the drain is shared, then the Lessee will be liable for the pro rata sharing of costs by all users of such drain;
 - 14.5.2 pay and install for all fluorescent bulbs, starters, ballasts and incandescent bulbs used in the Premises.
- 14.6 The parties specifically agree that the Lessee shall be compelled to conclude a service and maintenance contract in respect of:

14.6.1 the air-conditioning units serving the Premises subject to the provisions as specified in clause 14.2; as well as

14.6.2 the fire fighting and/or fire protection and/or fire equipment and/or fire extinguishers;

with reputable companies as approved by the Lessor in writing with the Lessee being liable for the costs of such appointment and associated costs (including but not limited to capital costs) specializing in such servicing and maintenance in accordance with specifications of the manufacturer and the Lessee shall deliver proof of compliance herewith to the Lessor, upon request thereto. The Lessee shall provide the Lessor with maintenance reports upon demand.

14.7 Should the Lessee fail to comply with its obligations in terms of clauses 14.5 or 14.6 the Lessor, without prejudice to any other of the Lessor's remedies, shall be entitled:

14.7.1 in the event of a breach of 14.5, to effect the necessary replacement or repair at the cost of the Lessee;

14.7.2 in the event of a breach of clause 14.6, to procure the services of such a company at the cost of the Lessee; and to recover the cost thereof from the Lessee. A certificate issued by the Lessor shall be *prima facie* proof of such costs.

14.8 Air-conditioning units/plants servicing more than one Lessee shall be serviced and maintained by the Lessor who shall be entitled to recover such cost from the Lessees, as recorded in clause 6 above. A certificate issued by the Lessor shall be *prima facie* proof of such cost incurred as well as the Pro-rata Share thereof. The Lessor shall however be liable for the capital costs associated with the equipment stipulated in this clause 14.8.

14.9 In the event of the Premises being served by means of an air-conditioning plant controlled by the Lessor, the Lessor may from time to time determine rules in respect of the switching on and off of the air-conditioning plant.

14.10 Unless otherwise directed by the Lessor in writing, the air-conditioning units installed in the Premises, by whoever, shall, upon early termination or expiration remain or become the property of the Lessor in the latter instance, without any compensation to the Lessee. The Lessee furthermore waives any claim for compensation or lien in respect of such air-conditioning units.

15 ALTERATIONS AND ADDITIONS

15.1 The Lessee shall not make any alterations or additions to the Premises, whether structural or otherwise, without the prior written consent of the Lessor. In addition, the Lessee shall obtain any required approval from the local authority before the commencement of any alterations or additions to the Premises.

15.2 In the event of the Lessor furnishing its written approval, such alterations and/or additions shall be carried out by the Lessee at the Lessee's expense by a suitably qualified contractor and in pursuance of plans approved of by the Lessor under the supervision and control of the Lessor or its architect, and the Lessee shall be obliged to have the necessary work carried out and completed as expeditiously as possible.

15.3 The fees of any architect employed by the Lessor for that purpose shall be borne and paid by the Lessee.

16 LESSOR'S GENERAL RIGHTS AND OBLIGATIONS

The Lessor shall:

- 16.1 promptly upon written request thereto carry out any repairs or maintenance which may be necessary from time to time to the exterior, including the roof, of the Building of which the Premises form part, but it shall not be responsible for any damage to the property of the Lessee from any cause, but it shall, on written request, cause any defects to such exterior to be repaired without undue delay; should the Lessor fail to respond to the aforesaid written request, the Lessee shall be entitled to put the Lessor on terms to commence with any such repairs or maintenance within a period of 14 (fourteen) days from the date of receipt of the demand; should the Lessor fail to so commence the repairs or maintenance and have same effected within a reasonable period, then the Lessee shall be entitled to have such repairs or maintenance effected at the cost of the Lessor. The Lessee shall not set off the cost of such repairs or maintenance against any amounts due to the Lessor, but shall claim such cost from the Lessor separately;
- 16.2 be entitled to enter the Premises at all reasonable times, either through its representative or servants or through contractors for the purpose of inspecting the Premises and for carrying out any repairs or other work if it should desire to do so. The Lessor shall, in exercising its rights as aforesaid, not unduly or unreasonably interfere with the conduct of the Lessee's Business and shall carry out any repairs or other work as expeditiously as possible. The Lessee shall not have any claim for remission of rent, compensation for damages in connection with the exercise by the Lessor of any of its aforesaid rights.
- 16.3 may affix to and exhibit on the windows of the Premises a "TO LET" notice during the period of six months immediately preceding the termination of this Lease and during that period the Lessee shall permit prospective Lessee's or purchasers to view the interior of the Premises and the Lessor or any other incoming Lessee to exhibit on the windows or doors of the Premises any notices that may be required in connection with any application for any license to carry on Business in the Premises.
- 16.4 not be liable and/or responsible for any damage/s and/or costs and/or losses associated with or resulting from a burglary or attempted burglary.

17 REINSTATEMENT

- 17.1 Any shopfittings as may be requisite or necessary for the conduct of the Lessee's Business erected in or upon the Premises shall, at the expiry of this Lease, be removed by the Lessee, if so advised in writing by the Lessor not later than 30 (thirty) days prior to the Lessee's vacation of the Premises, provided that if any damage is caused to the walls, roof or floor or any other portion of the Premises or the Building by the erection and/or removal of such shopfittings, any such damage shall be repaired and made good by the Lessee at its own expense before delivering up the Premises to the Lessor.
- 17.2 The parties acknowledge that the Lessor will provide the Lessee with a Certificate of Electrical Compliance in respect of the Premises at the Beneficial Occupation Date and the Lessee shall be obliged, at its own cost to provide the Lessor with such certificate, issued by a suitably qualified and registered electrician at the early termination or expiry of this Agreement.

- 17.3 Should the Lessor so direct in writing at any time, the Lessee shall upon the expiry or earlier termination of this Agreement, as the case may be at the Lessee's cost and expense restore and reinstate the Premises:
- 17.3.1 to the condition in which they were as noted in terms of the provisions made during the initial joint inspection that was done at the date of occupation. The Lessee shall be obliged to repair, replace or make good to the satisfaction of the Lessor any breakage, loss or damage in and to the Premises and without limiting the generality thereof, such as the items referred to above, howsoever and by whomsoever such damage, breakage or loss may have been caused; alternatively
 - 17.3.2 notwithstanding the condition at date of occupation, to a basic state consisting of a screed floor, white painted walls and a standard ceiling; alternatively
 - 17.3.3 a combination of clauses 17.3.1 and 17.3.2 above;
- in all instances, fair wear and tear excepted.
- 17.4 Should the Lessor not so direct in writing, the Lessor shall retain such alterations and/or additions and/or shopfittings in full ownership, without any compensation payable by the Lessor to the Lessee. The Lessee hereby waives any claim for compensation or lien for such alterations and/or additions and/or shopfittings whether or not they are removed and the Premises reinstated.
- 17.5 While for any reason or on any grounds that the Lessee occupies the Premises (which shall be deemed to be the case, notwithstanding the disputes referred to in this clause, without prejudice to the Lessor's rights, in the event of a failure by the Lessee, if so directed by the Lessor, to remove fixtures, fittings and assets in terms of clause 17.3 above) and the Lessor disputes its right to do so, then until the dispute is resolved whether by settlement, arbitration or litigation, the Lessee shall (notwithstanding that the Lessor may contend that this Agreement of Lease is no longer in force) continue to pay (without prejudice to its rights) the Gross Monthly Rental and all such further amounts as may be payable by the Lessee in terms of this Agreement, and the Lessor shall be entitled to accept and recover such payments, and such payments and the acceptance thereof or any other conduct by the Lessor shall be without prejudice to and shall not in any way whatsoever affect the Lessor's claim then in dispute. If the dispute is resolved in favour of the Lessor, the payments so made and received shall be deemed to be amounts paid by the Lessee on account of damages suffered by the Lessor by reason of the unlawful occupation or holding over by the Lessee.

18 **DAMAGE AND DESTRUCTION OF PREMISES**

- 18.1 Should the Premises be destroyed or damaged to an extent which prevents the Lessee from having beneficial occupation of the Premises then:
- 18.1.1 the Lessee shall have no claim of any nature whatsoever against the Lessor as a result thereof;
 - 18.1.2 the Lessor will be entitled to determine within 1 (one) calendar month after such destruction or damage whether or not this Lease shall be cancelled and shall notify the Lessee of its decision in writing .
- 18.2 Should the Lessor elect to cancel this Lease, then the Lessee shall have no claim of any nature whatsoever against the Lessor as a result of the cancellation of the Lease.

18.3 Should the Lessor elect not to cancel this Lease, then:

18.3.1 the Lessor shall reinstate, at its cost, the Premises as soon as reasonably possible in the circumstances, but should such reinstatement not have been completed within a period of 12 (twelve) months of date of the Lessor's election not to cancel this Lease, cancellation will, upon the expiry of such period of 12 (twelve) months, automatically take place;

18.3.2 the Lessee shall not be liable for any rent for so long as it is deprived of beneficial occupation of the Premises;

18.3.3 should the Lessee be given beneficial occupation from time to time of part of the Premises, then it shall make payment of the rental thereof on a pro rata basis in respect of period and area;

18.3.4 the period of this Lease shall be extended by the period during which the Lessee is deprived of beneficial occupation of the whole of the Premises.

18.4 Should the Premises be damaged to an extent that they are nevertheless still tenanted and can be occupied, this Lease shall not terminate, but the Lessee shall be entitled to a reasonable remission of rent for the period and proportionate to the extent to which the Lessee is deprived of beneficial occupation of the Premises and the Lessor shall reinstate or repair the Premises within a reasonable period.

18.5 Should any dispute arise between the Lessor and the Lessee in regard to the remission to which the Lessee is entitled as contemplated in clause 18.4 or should any dispute arise as to the reasonableness of the period within which the Lessor reinstates or repairs the Premises as contemplated in clause 18.4, then any such dispute shall be referred for determination by the Lessor's architect who shall act as an expert and whose decision shall be final and binding on the parties.

19 **EXEMPTION FROM LIABILITY**

19.1 The Lessor shall not be responsible for any damage to or the loss of any stock-in-trade, equipment, machines, raw material, papers or other articles kept in the Premises (whether the property of the Lessee or that of anyone else) by rain, hail, lightning or fire or by reason of riot, strikes or State's enemies or as a result of theft or burglary, with or without forcible entry, or through any other cause whatsoever, nor shall the Lessor be responsible for any personal injury which may be sustained in or about the Premises, the Building or the Property, or while using the lifts or hoists in the Building, by any of the directors, servants, agents, customers or invitees of the Lessee or any person whomsoever, however such injury may be caused, and the Lessee indemnifies the Lessor against any claim of whatsoever nature that may be made against the Lessor by any of the directors, servants, agents, customers or invitees of the Lessee or by anyone else in respect of personal injuries so sustained or in respect of the loss of or any damage to anything contained in the Premises. All the provisions of this clause shall apply and be fully operative notwithstanding that any loss, damage or injury hereinbefore referred to may occur or be sustained in consequence of anything done or omitted by the Lessor or any of its directors, servants or agents, whether negligently or otherwise howsoever, and notwithstanding that the Lessor may have been in breach of any of its obligations hereunder.

19.2 The Lessee shall have no claim or right of action against the Lessor for damage, loss or otherwise, nor shall it be entitled to withhold or defer payment of rent, nor shall the Lessee be entitled to a remission of rent, by reason of the Premises being in a

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defective condition or falling into disrepair or any particular repairs not being effected by the Lessor.

20 **ENFORCEMENT BY LESSOR**

Without in any way diminishing either the Lessee's obligations or the Lessor's rights set out herein, if the Lessee fails to carry out any of its obligations provided in this Lease, the Lessor shall be entitled, at its discretion, to enforce or to carry out the same on behalf of the Lessee and to recover from the Lessee all costs and expenses so incurred by the Lessor upon demand.

21 **BREACH**

Should the Lessee:

- 21.1 fail to pay the rent or any other amount due in terms of this Agreement on the due date thereof; or
- 21.2 breach this Agreement in any other way and fail to remedy such breach within 14 (fourteen) days after despatch of written notice per prepaid registered or certified post calling for such remedy;
- 21.3 consistently breach this Agreement in such manner as to justify the Lessor in holding that the Lessee's conduct is inconsistent with an intention or ability on the part of the Lessee properly to comply with its obligations in terms of this Agreement (the commission of the same breach, whether in respect of payment or otherwise on more than two occasions in any period of twelve consecutive calendar months being deemed to justify the Lessor holding as aforesaid);
- 21.4 not satisfy, within 14 (fourteen) days of its grant, any final judgment against the Lessee from which no appeal or any right to apply for rescission lies; or
- 21.5 effect or attempt to effect any compromise or composition with its creditors or any of them;
- 21.6 fail to keep the Franchise in respect of the Business conducted from the Premises, or be interdicted (permanent or temporarily) from conducting Business under the name and style of the franchise (if applicable); or
- 21.7 remove or allow the removal of any item which is the object of and falls under the Lessor's hypothec;

then and in any of such events, the Lessor shall have the right, but not obliged to

- forthwith cancel this Agreement and/or retake possession of the Premises; and/or
- claim specific performance; and/or
- claim damages without prejudice to any of its other rights under this Agreement or at law;

and in so doing, the Lessor shall be entitled to remove from the Premises any goods situate therein, in which event the Lessee shall have no claim whatsoever either for damages or otherwise against the Lessor. Any goods so removed from the Premises shall be stored at the cost and risk of the Lessee.

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- 21.8 The Lessor shall be entitled to recover all legal costs incurred by it from the Lessee, including but not limited to Attorney and Own Client charges, tracing fees and such collection commission in proving its claim in the event of the death or insolvency of the Lessee and in taking any steps or action whatsoever to protect the Lessor's interest under this Lease and in exercising its powers in the event of any breach of any of the provisions of this Lease and in demanding or obtaining payment of all or any sums claimable by the Lessor from the Lessee and in suing for the recovery thereof (from the date of instructing its attorney and whether or not legal proceedings have commenced).
- 21.9 The Lessor shall furthermore be entitled to claim letting commission to re-let the Premises at the rates set out below, from the Lessee:
- 5% for first two year's rental of the new replacement tenant;
- 2.5% for the next three year's rental of the new replacement tenant;
- 1.5% for the next three year's rental of the new replacement tenant;
- 1% on the balance with a minimum of one month's rental.
- 21.10 Without prejudice to any of the other rights of the Lessor from due date to date of payment, the Lessee shall pay interest at the rate as recorded in clause 4 of the Schedule due by the Lessee to the Lessor in terms of or arising out of this Agreement, including any monies disbursed by the Lessor on behalf of the Lessee.
- 21.11 Any cancellation or declaration of cancellation of this Agreement shall not have the effect of cancelling any of the rights of the Lessor which accrued prior to the cancellation or any other obligation of the Lessee which arises on termination of this Agreement.
- 21.12 In the event of a cancellation of this Lease by the Lessor and the Lessor as a result thereof claiming damages from the Lessee, the onus shall be on the Lessee to prove the amount (if any) that should be credited to the Lessee in respect of the reversion to the Lessor of the right to re-let the Premises which the Lessor could have realized therefrom by the use of the Premises after they came into the Lessor's possession (after cancellation) for the period from the date of cancellation until the date upon which this Agreement would have expired by effluxion of time.
- 21.13 If on termination of the Agreement, repairs or renovations are necessary to the Premises by virtue of a failure of the Lessee to carry out the obligations imposed upon the Lessee by this Agreement, the Lessor shall be entitled to carry out such repairs or renovations as are necessary and to recover the costs incurred by it from the Lessee. The Lessee shall also be responsible for damages for loss of rent during the period the repairs and renovations are being carried out at no less than the rent payable immediately prior to termination of the Agreement and reckoned until the end of the month in which the work is completed.

22 **HOLDING OVER**

- 22.1 In the event of the Lessor canceling this Agreement and the Lessee disputing such cancellation and remaining in occupation of the Premises, or, in the event of the Lessee claiming not to enjoy full and beneficial occupation of the Premises due to any reason whatsoever, the Lessee shall, pending settlement of the dispute either by

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negotiation or litigation, continue to pay an amount equivalent to the monthly rent as well as any other amounts owing by the Lessee to the Lessor in terms of this Agreement on the due dates thereof and the Lessor shall be entitled to accept, render statements and recover such payments and such acceptance of payment and rendering of statements shall be without prejudice to and without in any way affecting the Lessor's claim for cancellation.

- 22.2 Should the dispute be resolved in favour of the Lessor, the payment made and received in terms of this clause shall be deemed to be amounts payable by the Lessee on account of and in reduction of damages suffered by the Lessor by reason of the cancellation of this Agreement and/or the unlawful holding over by the Lessee. The failure to pay any such amount shall constitute a breach of this Agreement and entitle the Lessor, inter alia, to cancellation notwithstanding any prior cancellation which may be in dispute.

23 COMMON AREA

- 23.1 The Common Areas shall at all times be subject to the exclusive control of the Lessor. The Lessor shall have the right to operate and maintain the Common Areas and any facilities in the Building in such a manner as the Lessor may determine in its sole discretion.
- 23.2 Without in any way limiting the generality of the foregoing, the Lessor shall have the right to construct, maintain and operate lighting facilities wherever it determines in its discretion, in or on the Common Areas and the Building, and to control same. From time to time the Lessor shall have the right to change the Common Areas, location and arrangement of Common Areas, to close temporarily or permanently all or any portion of the Common Areas, and to do or perform such other acts in and to the Common Areas as the Lessor may determine in its sole discretion.
- 23.3 The Lessee shall have a non-exclusive right of reasonable use, having regard to the rights of other tenants, of the Common Area, including but without limiting the generality thereof, the service roads, loading facilities, malls, yards, toilets and other conveniences and facilities provided by the Lessor in and upon the Property and the Building. The Lessee undertakes that its employees will use the Common Area in accordance with the non-exclusive rights granted to the Lessee.
- 23.4 The Lessor shall have the right from time to time to make, vary, amend or add to the rules and regulations governing:
- 23.4.1 the Common Area;
 - 23.4.2 any joint facilities which may exist in or upon the Property or the Building;
 - 23.4.3 generally, the use of joint, common and open areas in and upon the Property and the Building;
 - 23.4.4 the security and safety of the Property and the Building and all persons therein from time to time; and the air-conditioning plant (if any);
 - 23.4.5 and the Lessee undertakes to observe the rules and regulations from time to time in force as if they were terms and conditions of this Agreement.
- 23.5 The Lessor shall have the right to cause the removal of any persons from the Common Areas or to deny the use of the Common Areas by any person.

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24 **PARKING**

- 24.1 The Lessee shall not be entitled, itself or through its directors, agents, servants or employees to utilize the customer parking.
- 24.2 The Lessee shall not use any portion of any service area or access road for the parking of vehicles otherwise than during the loading and unloading thereof nor carry out or permit to be carried out any repairs or maintenance to such vehicles on any access road or service area.
- 24.3 The allocation of all parking area/s, parking bays and the hours relevant to such parking shall be in the sole and absolute discretion of the Lessor and/or its agent, notwithstanding the fact that specific parking bays have been allocated.
- 24.4 The Lessor and/or its agent do not warrant or undertake that the local authority or the Lessor will not charge any levy for such parking.
- 24.5 The Lessor and/or its agent shall at times have the right to:
 - 24.5.1 control the parking area/s of the Building and to change the allocation thereof and arrangements in respect thereof as to restrict parking by Lessees and their officers, agents and employees;
 - 24.5.2 temporarily close all or any portion of the parking areas, to discourage and restrict non-customer parking and generally control and do all things, which, in the judgment of the Lessor and/or its agent, shall be beneficial to the Lessees of the Building as a whole and/or for the improvement, convenience and use thereof by Lessees and their customers.
 - 24.5.3 make and enforce rules and regulations with regards to the proper operation, maintenance and control of such parking area/s and driveways.
- 24.6 In addition to the provisions of clause 24.5, the Lessor and/or its agent has (if applicable) allocated a designated area for parking by Lessees and their officers, employees and agents. The Lessee shall comply with all the rules and regulations applicable to such Lessee parking area/s.
- 24.7 The Lessee undertakes that:
 - 24.7.1 it will not cause or permit vehicles belonging to or used by it or its directors, principals, servants licensees or invitees to be parked in the visitors' parking areas or driveways other than the areas allocated in writing by the Lessor and/or its agents;
 - 24.7.2 no obstruction shall be placed or be permitted to be placed by it or its directors, principals, servants, licensees or invitees in the said driveways and parking areas which may interfere with their use; and
 - 24.7.3 no vehicles driven by it or its directors, principals, servants, licensees or invitees shall obstruct the free flow of traffic, the entrances or exits of the driveways or the pedestrian entrances to the Building.
- 24.8 The leasing of the parking bay/s contemplated herein is entirely severable from the remainder of this Agreement.

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25 LESSOR'S CONSENT

- 25.1 Save where it is expressly provided in this Agreement that the Lessor's consent or approval may not be unreasonably withheld or refused, the grant or withholding or refusal by the Lessor of its consent or approval shall be within its absolute discretion.
- 25.2 Should there be any such express provision in this Agreement and should a dispute arise between the Lessor and the Lessee as to whether the Lessor has unreasonably withheld or refuse to its consent or approval, the onus shall be on the Lessee to prove that the Lessor has withheld or refused its consent or approval unreasonably.

26 ALTERATIONS AND REPAIRS BY LESSOR

- 26.1 The Lessor shall be entitled at all times during the operation of this Agreement:
- 26.1.1 to complete the Building (if it is still in the course of completion at the commencement of this Agreement); and/or
- 26.1.2 to effect any repairs, alterations, improvements and additions to the Building;
- and for such purposes to erect scaffolding, hoardings and building equipment in, at, near or in front of the Premises and also such devices as may be required by Law or which the Lessor's architects may reasonably consider necessary for the protection of any person against injury arising out of the building operations.
- 26.2 The Lessee acknowledges that the Lessees of the Building must necessarily suffer a certain amount of inconvenience and loss of beneficial occupation from any building operations, noise and dust resulting from the exercise of the Lessor's rights in terms of clause 26.1. In exercising its said rights the Lessor shall endeavour to cause as little interference as possible with the Lessee's beneficial occupation of the Premises.
- 26.3 The provisions of clauses 26.1 and 26.2 shall apply irrespective of whether the work referred to therein is carried out by the Lessor, its servants or agents or by any independent contractor appointed by the Lessor.
- 26.4 The Lessee shall not have any claims of whatsoever nature against the Lessor or any such independent contractor arising out of the exercise of any of the rights referred to in clause 26.1, and, in particular, but without derogating from the generality hereof the Lessee shall not:
- 26.4.1 have any right to cancel this Agreement;
- 26.4.2 be entitled to any remission of rent or other imposts;
- 26.4.3 be entitled to any compensation or damages (including consequential damages) in respect of any loss or damage which the Lessee may suffer as aforesaid, including loss or damage which the Lessee may suffer as a result of loss of business, damage to the Premises, and/or damage to any contents of the Premises.

27 ~~RELOCATION~~

- ~~27.1 Should the Lessor at any time during the currency of this Lease term decide, in its sole discretion, that in consequence of any renovations, refurbishment, restructure of tenant~~

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~~mix, additional phases being carried out in the Building, that the Lessee should be moved to alternative Premises in the Building, then notwithstanding anything to the contrary contained or implied in this Lease, the Lessor shall:~~

~~27.1.1 be entitled to propose that this Lease be cancelled; and~~

~~27.1.2 that the Lessee enter into an alternative Lease with the Lessor, for alternative premises in the Building, provided that the terms and conditions of any such alternative Lease, including the rate at which rent is payable, shall not be more onerous than those set out in this Lease.~~

~~27.2 In the event that the Lessee refuses to enter into such an alternative Lease within 30 (thirty) days after being put to the election by the Lessor, the Lessor shall forthwith be entitled to terminate this Lease on not less than 60 (sixty) days notice given in writing to the Lessee, in which event the Lessee shall have no claim for compensation or damages, nor any other claim, against the Lessor in respect of such cancellation.~~

~~27.3 It is specifically recorded that the purposes of this provision, amongst other things, is to give the Lessor flexibility to control its investment in a competitive market in the Lessor's unfettered discretion.~~

28 LESSOR'S RIGHT TO ADD TO BUILDING

28.1 The Lessor may terminate this Agreement by giving the Lessee six (6) months written notice to such effect in all or any of the following circumstances: -

28.1.1 should the Lessor wish to demolish the Building and/or the Premises; or

28.1.2 should the Lessor wish to reconstruct and/or redevelop and/or renovate the Building and/or the Premises and/or construct a further phase to the Building.

28.2 The Lessee shall not have any claim for damages of whatsoever nature and howsoever arising by reason of the early termination of this Agreement as provided above.

28.3 The Lessor shall, however, have the right at any time to commence the reconstruction and/or redevelopment and/or renovation of the Building, other than the Premises and/or construction of a further phase to the development, and these operations may proceed while the Lessee is in occupation of the Premises.

28.4 Notwithstanding the implementation of any work as contemplated in clause 28.3 above, the Lessee shall have no right to object to such work or to claim any rebate of amounts payable in terms of this Agreement, or have a claim for damages, howsoever arising, during the period in which the said work may be in progress.

28.5 It is specifically recorded that the purposes of this provision, amongst other things, is to give the Lessor flexibility to control its investment in a competitive market in the Lessor's unfettered discretion.

29 FAILURE OF SERVICES

The Lessee shall have no claim whatsoever, whether for damages or remission of rent or cancellation of this Agreement, against the Lessor nor be entitled to withhold or defer payment of rent by reason of any suspension of or interruption in the supply of water, gas, electricity,

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air-conditioning, or heating (howsoever such suspension or interruption may arise) or by reason of any amenities in or on the Premises or the Building or the Property being out of use or out of order for any reason whatsoever, including negligence or other fault on the part of the Lessor and/or servants and for any period whatsoever.

30 **FORCED ENTRY, THEFT, ROBBERY AND BURGLARY**

The Lessee shall be responsible for repairing at its own cost, all damage to the Premises, including but not limited to all portions of the Premises and/or shop front and/or roof, caused by or arising from any actual or attempted forced entry, theft, robbery or burglary.

31 **INSURANCE**

31.1 The Building is insured by the Lessor.

31.2 The Lessee shall not keep or do or permit to be kept or done in the Premises anything which, in terms of any of the conditions of any fire insurance policy held from time to time by the Lessor in respect of the Building, will or may increase the rate of premiums payable in respect of any such fire insurance policy provided that:

31.2.1 should the Lessor obtain at the request of the Lessee an amendment of any such policy to permit the keeping of any particular article in or upon the Premises by the Lessee; and

31.2.2 should any additional premium become payable by the Lessor as a result of that amendment;

then the additional premium shall be paid by the Lessee to the Lessor on demand.

31.3 The Lessee shall not do or permit anything to be done which renders or may render void or voidable any insurance policy held from time to time by the Lessor in respect of the Building.

31.4 The Lessee shall be obliged at its cost to take out and keep in force during this Lease a public liability insurance policy for such amounts as will provide indemnity in respect of all claims which may foreseeable be made against the Lessee and/or the Lessor arising out of its Business activities in the Premises.

31.5 The Lessee shall insure and keep insured at its cost throughout the period of this Lease all of the glass, windows (including frames and glazing) and shop fronts in or on the Premises with an insurance company and in terms of an insurance policy approved by the Lessor. The Lessee shall make timeous payments of the insurance premiums and exhibit proof of payment to the Lessor on demand.

32 **NOTICE**

32.1 The Parties respective *domicilia citandi et executandi* for the purpose of all notices to be given in terms of this Agreement and the service of all legal process shall be their respective addresses as set out in clauses 2 and 6 respectively of the Schedule.

32.2 Any notice which has to be sent by either party to the other shall be effective only if delivered or sent to the addressee's domicilium address nominated in terms of clauses 2 and 6 of the Schedule and shall deemed to have been properly given and received:

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- 32.2.1 if delivered by hand, on the date of delivery thereof;
- 32.2.2 if sent by pre-paid registered post or certified post, 3 (three) days after the date of dispatch thereof;
- 32.2.3 if sent by facsimile transmission to the addressee's then current facsimile number, on the day that it is so dispatched.
- 32.3 Notwithstanding anything to the contrary herein contained or implied, a written communication actually received by the addressee, shall constitute proper notice in terms hereof.
- 32.4 Any party shall be entitled, by notice in writing to the other party, to change it's domicilium address to the any other address within the Republic of South Africa, provided that the change shall become effective only 14 days after service of the notice

33 JURISDICTION

- 33.1 At the option of the Lessor, any action or application arising out of this Agreement, its enforcement or any cancellation thereof may be brought either:
 - 33.1.1 in the Magistrate's Court having jurisdiction in respect of the Lessee notwithstanding that the amount in issue may exceed the jurisdiction of such court; or
 - 33.1.2 in the High Court of South Africa, and the Lessee hereby consents to the jurisdiction thereof in respect of any application or action brought against it by the Lessor arising out of this Agreement, its enforcement or cancellation.
- 33.2 It shall be within the absolute discretion of the Lessor whether to proceed against the Lessee in the Magistrate's Court referred to in clause 33.1.1, the High Court referred to in clause 33.1.2, or any other Court having jurisdiction.

34 CONSENT TO CREDIT VERIFICATION

- 34.1 The Lessee irrevocably consents to the Lessor and / or its agents requesting any information available on any credit bureau regarding the Lessee stipulated herein from time to time.
- 34.2 This consent includes (but is not limited to) that the Lessor and/or its agents, as the case may be, may:
 - 34.2.1 perform a credit search on the Lessee's credit profile with more than one registered credit bureau at any time during the currency of this Lease.
 - 34.2.2 should the Lessee fail to meet its commitments in terms of this Lease, the Lessor and/or its agents record the Lessee's non-performance to any credit bureau.
 - 34.2.3 request a report where the Lessor and/or its agents are monitoring the Lessee's payment behaviour by researching the Lessee's profile.
 - 34.2.4 use any new information and data obtained from any registered credit bureau in respect of future applications to lease (if applicable).

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34.2.5 record the details in respect of the Lessee's account with any registered credit bureau.

34.2.6 record and transmit details of the Lessee's performance in terms of this Agreement and to any registered bureau how the account is conducted by the Lessee in meeting its obligations in terms of this Lease.

34.3 The Lessor will give the Lessee 20 (twenty) business days' written notice prior to forwarding the details as set out above to any registered credit bureau.

35 **FICA REQUIREMENTS**

The Lessee acknowledges the Lessor's duty to comply with the Financial Intelligence Centre Act, 38 of 2001, as amended, and agrees to provide the Lessor with the relevant documents as required by law.

36 **CHANGE OF BUILDING NAME**

The Lessor shall have the right to change the name of the Building. The Lessor shall not be liable for any losses or damages suffered by the Lessee arising from or incidental to such change of name.

37 **ARBITRATION CLAUSE**

37.1 For the purposes of this clause 37, the term "dispute" will be interpreted in its widest sense and shall include any dispute or difference in connection with or in respect of the conclusion or existence of the Agreement, the carrying into effect of this Agreement, the interpretation or application of the provisions of this Agreement, the parties' respective rights and obligations in terms of and arising out of this Agreement, including also (but not limited in any manner whatsoever) the Lessor's right to evict the Lessee, to claim payment of any amounts payable in accordance with the provisions of the Agreement (including any holding-over), the determination of any amounts payable, claim payment of recoveries, to relocate the Lessee, to redevelop and/or renovate and/or upgrade the Premises or the Building and to effect any alterations or additions to the Premises or the Building or construct a further phase to the Building, as well as in respect of the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Agreement.

37.2 The Lessor in and at its sole and unfettered discretion (but not the Lessee) will be entitled to refer any dispute to arbitration in accordance with the provisions of this clause 37.

37.3 Should the Lessor elect to refer any such dispute to arbitration, the Lessor shall notify the Lessee of its intention to refer such dispute to arbitration in terms of this clause 38 by notifying the Lessee in writing of its intention to do so ("the arbitration notice"). The arbitration notice must be delivered to the Lessee's domicilium. The arbitration shall be before one arbitrator. The arbitration notice shall include the names of three practicing advocates (with no less than 10 (ten) years' experience) whom the Lessor proposes for appointment as arbitrator.

37.4 The Lessee shall have a period of 3 (three) calendar days from delivery of the arbitration notice to the Lessee's domicilium to elect one of such advocates as

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arbitrator. Should the Lessee, however, fail to elect one of the aforesaid three practicing advocates as arbitrator within such 3 (three) calendar days from date of the arbitration notice being delivered to the Lessee's domicilium, the chairman of the Pretoria Bar shall appoint any one of the three nominated advocates as the arbitrator.

37.5 Unless otherwise expressly agreed upon by the parties in writing:

37.5.1 The arbitration proceedings shall be held in Pretoria, and shall be conducted in terms of the Summary Procedure Rules of the Association of Arbitrators of Southern African, as amended from time to time, (the "Arbitration Rules").

37.5.2 The arbitration proceedings shall be conducted as expeditiously as possible and on the basis that the arbitration hearing be finalised within 30 (thirty) calendar days from the date of appointment of the arbitrator (i.e. being the date upon which the Lessee timeously elects one of the practicing advocates as arbitrator or, if the Lessee does not do so timeously, the date upon which the chairman of the Pretoria Bar appoints one of such advocates as arbitrator). As the aforesaid 30 (thirty) calendar days period must be met, the arbitrator will, at the outset, lay down the time periods so as to ensure that such 30 calendar days period be met, and which then, in itself, entails that the arbitrator will amend the time periods, provided for in the Arbitration Rules, so as to meet this 30 (thirty) calendar days deadline.

37.5.3 The arbitrator shall make his/her award within 10 (ten) calendar days following the finalisation of the arbitration hearing.

37.5.4 The arbitrator shall be entitled, on the written application of any party at any time (provided that such party is then a party to the proceedings), to be made in a manner acceptable to the arbitrator, to amend the Arbitration Rules or to supplement them in the interests of resolving the dispute effectively, efficiently and economically (provided that no such amendment or supplemental Rule shall operate retrospectively).

37.5.5 The arbitrator shall not be bound by the statutory or common law rules relating to proof and evidence.

37.5.6 The arbitrator shall also make a ruling regarding the costs of the arbitration proceedings.

37.5.7 The decision of the arbitrator shall be final and binding and there shall be no right of appeal (notwithstanding the provisions of the Arbitration Rules).

37.5.8 The arbitrator shall be entitled to determine his/her own jurisdiction and shall be entitled, *mero motu*, to raise matters *mutatis mutandis* as if the dispute was heard before a Judge in the High Court.

37.6 The provisions of this clause 37 shall prevail to the extent of there being any conflict between the Arbitration Rules and this clause 37.

37.7 Subject to the other provisions of this clause 38, the arbitration proceedings contemplated herein shall be held in accordance with the provisions of the Arbitration Act, but in the event of there being any conflict, the provisions of this clause 38 will prevail in so far as legally tenable.

37.8 Without detracting from the effect (if any) of any other act taken by any party which may affect the issue of prescription, the parties irrevocably agree and acknowledge

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that the arbitration notice shall interrupt prescription and shall be deemed to constitute the service of a process for the purpose of interrupting prescription in terms of Section 13 of the Prescription Act, No. 68 of 1969 (or, as the case may be, the corresponding provision in any amendment thereto or in any replacement legislation).

- 37.9 Any one of the parties will be entitled to approach the Court to make the award an order of Court, and this includes that any party may, on an urgent basis, approach the Court for this purpose and make the award an order of Court, and the parties waive compliance with time periods and/or notices during or in respect of such process.
- 37.10 Pending the arbitration, the normal provisions embodied in this agreement pertaining to holding-over will apply.
- 37.11 The provisions of this clause 37:
- 37.11.1 constitutes an irrevocable consent by the parties to the arbitration proceedings provided for herein and none of the parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause or such proceedings;
- 37.11.2 are severable from the rest of this agreement and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of this agreement for any reason whatsoever.
- 37.12 Nothing which is contained in this clause 37 shall preclude anyone of the parties from seeking interim and/or urgent relief from a Court of competent jurisdiction and to this end the parties hereby consent to the jurisdiction of the High Court.

38 RENEWAL

- 38.1 Subject to the Lessor not require the Premises for its own use or occupation and provided that the Lessee has not breached any of the terms and conditions of this Agreement, at any time during the currency of this Agreement, (in the event of such breach then notwithstanding the fact that the Lessor failed to exercise its rights in accordance with the breach provisions of this Agreement), the Lessee shall have the right to renew this Lease for the Renewal Period as recorded in clause 3 of the Schedule commencing on the day after the Termination Date.
- 38.2 The Lessee shall exercise its right to renew this Lease by written notice to the Lessor to reach the Lessor by not later than 8 (eight) months before the expiry of the Lease Period.
- 38.3 The renewal shall be upon the same terms and conditions as are set out in the Agreement save that:
- 38.3.1 the rental payable by the Lessee to the Lessor during the Renewal Period, shall be the fair market value of the Premises with a fair and reasonable escalation at the time, determined with reference to similar premises, substantially for similar purposes, in the area where the Premises are situated and comparative areas, as agreed upon in writing between the Lessor and the Lessee.
- 38.3.2 in the event of the Lessor and the Lessee failing to agree on such fair market value for the Renewal Period within 3 (three) months from the date of exercising of the right to renew and, failing agreement, then:

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- 38.3.2.1 the rental and the escalation rate for the Renewal Period to be paid by the Lessee shall be determined by an independent director of a property management company with at least 10 (ten) years experience in letting of Regional Retail Shopping Centres to be agreed upon by the Lessor and the Lessee and failing agreement, such person shall be appointed by the President for the time being of the Polokwane Association of Attorneys (or his nominee) and shall act as an expert and not as an arbitrator; and
- 38.3.2.2 the said expert shall determine the rental to be paid by the Lessee during the Renewal Period based on the then current market rentals for similar premises in the vicinity of the Premises and any other criteria which the expert may consider relevant in determining the said rental, provided that the expert shall have full discretion as to the procedure to be followed in determining the fair rental to be paid during the Renewal Period, bearing in mind the requirement that such determination is to be made with a minimum of delay and the decision of the expert shall be binding and final upon the Lessor and the Lessee;
- 38.3.2.3 there shall be no further right to renew.
- 38.4 The rental and annual escalation rate determined in terms of clauses 38.3.2.1 or 38.3.2.2 as the case may be, in no way novates or relieves the Lessee from its obligations in terms of this Agreement to pay any charges and to continue to pay any charges during the Renewal Period, which are properly levied against the Lessee during the initial Lease Period;
- 38.5 In the event of the rental for the Renewal Period not having been determined by the Termination Date, then, until such determination is made, the Lessee shall pay to the Lessor the rental payable for the period commencing upon the expiry of this Agreement together with any charges properly levied against the Lessee at the time in terms of this Agreement at an amount equal to the rental for the last month of this Agreement plus an amount of 12% (twelve percent) thereof;
- 38.6 The Lessee's obligation at the termination of the Renewal Period to re-instate the Premises to the same good order and condition that the Premises were in as at the Commencement Date (as defined in clause 5 of the Schedule) and not in the condition the Premises are in as at the commencement of the Renewal Period;
- 38.7 Should the Lessee not exercise its right to renew as set out in this clause 38 and should the Lessee remain in occupation of the Premises after the expiry date of the Lease Period, the Lessee acknowledges that it shall occupy the Premises on a month to month basis and save for the provisions of this clause 38, the remaining provisions of the Agreement shall apply *mutatis mutandis*. For the avoidance of doubt, the parties record that if the Lessee does not exercise its right to renew, it shall lapse and have no further force or effect.
- 38.8 As the commercial terms of this agreement has been fixed as stipulated herein and for the periods recorded herein, the commercial terms in the agreement to be reached in terms of this clause may be vastly different from the commercial terms of this agreement of lease.

39. SALE OF BUILDING/PROPERTY

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Should the LESSOR sell or otherwise dispose of the building/property or cede or assign its rights or delegate its obligation in respect thereof to a third party/ies at any time during the currency of this Lease Agreement or any renewal thereof, the LESSEE undertakes to hold itself bound by the terms of this Lease Agreement to such third party as the new LESSOR, and this Lease Agreement shall continue unchanged and of full force and effect as fully as though the LESSOR had remained unchanged.

40. GENERAL

- 40.1 This Agreement constitutes the entire agreement between the parties regarding the subject matter thereof and shall not be modified, varied, altered, supplemented, renewed or cancelled, either in whole or in part (including this clause), unless in writing and signed by the parties or their agents authorised thereto in writing; unless such cancellation is consequent upon any breach of the Agreement by the Lessee, as provided for in clause 21 in which instance the Agreement may be terminated by the Lessor in terms of the said clause 21.
- 40.2 No relaxation or indulgence which the Lessor may show to the Lessee shall in any way prejudice the Lessor's rights under this Agreement and in particular no acceptance by the Lessor of the rent after due date, (whether on one or more occasions), shall preclude or stop it from exercising any rights enjoyed by it hereunder by reason of any subsequent payment not being punctually made.
- 40.3 The Lessor will not be bound by any representation or warranty not expressly recorded in this Agreement. Purely by way of example and without in any way limiting the generality hereof, the Lessor records that it or its agent/s may have certain perceptions or opinions regarding pedestrian traffic, customer profile, location of Premises or other factors relating to the viability of the Building. In the event that the Lessor or its agent/s may have conveyed those perceptions or opinions to the Lessee, the Lessee acknowledges that:
- 40.3.1 any statements conveyed to it concerning those matters constitutes nothing more than the honest opinion of the Lessor or its agent/s;
- 40.3.2 any statements thus conveyed to it do not amount to a representation concerning those matters or a warranty that what was told to it (the Lessee) would indeed eventuate and prove to be correct;
- 40.3.3 such statements did not induce the Lessee to conclude this Agreement;
- 40.3.4 it (the Lessee) has formed its own independent view as to the viability of concluding this Agreement.
- 40.4 The receipt by the Lessor or its agents of any rent or other payments shall in no way whatsoever prejudice or operate as a waiver, rescission or abandonment of any cancellation or right of cancellation effected or acquired prior to such receipt.
- 40.5 If any provision of this Agreement is unenforceable, the Lessor shall be entitled to elect, at any time that such provision shall be severed from the remaining provisions of this Agreement which shall not be affected and shall remain of full force and effect.

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ANNEXURE “B”**EXTRACT FROM THE MINUTES OF A MEETING OF THE DIRECTORS OF
REGISTRATION NUMBER:****HELD AT _____ ON THE _____ DAY OF _____ 20____**

RESOLVED:

1. That the Company as Lessee offers to lease the Premises as recorded in the Agreement of Lease to which this resolution is attached from
2. That _____ in his capacity as director of the Company be authorized to sign all and any documentation and take any action required to give effect to this Resolution.

CERTIFIED A TRUE EXTRACT FROM THE MINUTES OF THE MEETING

.....
 DIRECTOR:
 FULL SIGNATURE

.....
 DIRECTOR: [insert name]
 FULL SIGNATURE

.....
 DIRECTOR: [insert name]
 FULL SIGNATURE

.....
 CHAIRMAN: [insert name]
 FULL SIGNATURE

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ANNEXURE "C"

DEED OF SURETYSHIP

I, the undersigned :

ID

OF _____
(Insert residential address)

Single/married in/out of community of property
(delete whichever is not applicable)

jointly and severally do hereby interpose and bind myself, ourselves unto and in favour of :

its Order, Successors in Title or Assigns;

(hereinafter referred to as "the **CREDITOR**");

As sureties for and co-principal debtors in solidum jointly and severally with each other and with :

(hereinafter referred to as "the Principal Debtor");

for the due and proper fulfillment of all the obligations of, and for the punctual payment of all sums which are now and may hereafter become due by the Principal Debtor to the **CREDITOR** of whatsoever nature and howsoever arising, including damages for breach of contract, in terms of the Lease entered into (or about to be entered into) by the **CREDITOR** and the Principal Debtor in respect of the Premises being Shop _____,

This surety shall in no way be affected or diminished if the **CREDITOR** shall either now or in the future obtain any additional suretyship, guarantees or securities, whether real or personal in respect of the debts and or obligations of the Principal Debtor. This suretyship and undertaking shall be continuing covering security for any present or future indebtedness of the Principal Debtor to the **CREDITOR** and shall remain in full force and effect notwithstanding any fluctuation in or even a temporarily extinction of such indebtedness for the full term of the Agreement of Lease or any period of renewal thereof, whether in terms of the Agreement of Lease or by further Agreement between the **CREDITOR** and Principal Debtor.

If the Principal Debtor shall be placed in liquidation or under judicial management or under sequestration, the **CREDITOR** shall be entitled to accept any payment or dividend on account and in reduction of the Principal Debtors indebtedness without prejudice to its rights against us, which rights shall further not be prejudice by the **CREDITORS** acceptance of any other securities, guarantees or suretyships arising out of such liquidation, judicial management, or sequestration and I/we further bind myself/ourselves in the event of such liquidation, judicial management or sequestration of the Principal Debtor not to file any claims against the Principal Debtor in competition with the **CREDITOR**.

As collateral security for the discharge of the obligations assumed by me/us in terms hereof, I/we hereby cede, assign, transfer and make over unto and in favour of the **CREDITOR** all my/our right, title and interest in and to any amount which may now be or may hereafter become owing to me/us by the Principal Debtor from any cause of indebtedness whatsoever.

In the event of either of us being released from our obligations under this suretyship for any reason whatsoever, the obligations of the remaining one of us shall remain and be unaffected thereby.

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I/We agree that if any payment made by the principal Debtor has discharged an obligation owed by it to the **CREDITOR** and such payment is set aside under the insolvency or company laws or by an order of Court granted for any reason, or if such payment is refunded to the Principal Debtor on his liquidator or trustee by agreement, our liability to the **CREDITOR** shall be revived as if such payment had never been made, notwithstanding that we had been released from our liabilities under the suretyship prior to the said setting aside or refund.

I/We hereby renounce the benefits of the legal exceptions "*non causa debiti*", "*non numeratae pecunia*", "*excussio*", "*division*", "*no value received*", "*revision of accounts*", with the force meaning and effect of all of which we declare ourselves to be fully acquainted with and to understand and appreciate same.

I/We choose domicilium citandi et executandi in respect of any action arising out of or in connection with or incidental to this Deed of Suretyship at the address of the Premises rented by the Principal Debtor from the **CREDITOR**.

I/We hereby consent, in terms of Section 45 of Act No. 32 of 1944, as amended, to the **CREDITOR** at its discretion taking any legal proceedings for enforcing any of its rights under this Deed of Suretyship for the recovery of any moneys hereunder or otherwise, in the Magistrate's Court of any district having jurisdiction by virtue of Section 28 of the aforesaid act.

SIGNED AT _____ ON THIS _____ DAY OF _____ 20__ IN THE PRESENCE OF THE UNDERSIGNED WITNESSES.

AS WITNESSES:

1. _____

FULL SIGNATURE

2. _____

*** Consent**

(delete if not applicable)

I, the undersigned _____ being married to

_____ the above surety in community of property consent and approve of the above said surety signed by my husband/wife.

AS WITNESSES

1. _____

SPOUSE

2. _____

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Electrical Consumption Tariffs

The Lessee shall be charged on the same tariff basis at the same rates as the Supply Authority charges for its bulk supply to the site, and in accordance with the supply agreement. If a Time of Use (TOU) tariff is available from the Supply Authority, but not opted for by the Site, The lessee then reserves the right and should be metered in accordance with these TOU tariffs or the most beneficial tariff to its consumption structure.