AGREEMENT OF LEASE

Entered into by and between:

[LESSOR COMPANY DETAILS]
[Registration Number]
[Vat Registration No]
a Company duly registered and incorporated in accordance with the
Company Laws of the Republic of South Africa
trading as
[CENTRE TRADING NAME]

(hereinafter referred to as the “Lessor”)

-and-

[TENANT COMPANY DETAILS]
[Registration Number]
[Vat Registration No]
a Company duly registered and incorporated in accordance with the
Company Laws of the Republic of South Africa
trading as
[TENANT TRADING NAME]

(hereinafter referred to as the “Lessee”)

The Lessor hereby lets to the Lessee who hereby hires the premises described herein on the terms
and conditions as set out in the Schedule,
General Conditions of Lease and Annexures thereto
IMPORTANT NOTE: Please read and consider this agreement and its annexures carefully as it shall constitute a binding agreement. You will be requested to declare that you understood the content of this entire agreement and its annexures and more specifically the fact, nature and effect of clauses (terms) next to which you were requested to specifically initial. Please note that initialling next to any clause (term) would not derogate the enforceability of any of the other terms of this agreement. Please do not disregard any terms not so emphasised as such terms will be binding and enforceable.

SCHEDULE TO GENERAL CONDITIONS OF LEASE

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<tr>
<th>1. THE LESSOR</th>
<th>[LESSOR COMPANY DETAILS]</th>
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<td>Trading As [CENTRE TRADING NAME]</td>
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<td>[LESSOR DOMICILIUM 3]</td>
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<th>2. THE LESSEE</th>
<th>[TENANT COMPANY DETAILS]</th>
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<td>With chosen domicilium citandi et executandi (address for service of documents and notices) at the leased premises</td>
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3.1 BASIC MONTHLY RENTAL (EXCLUDING VAT)

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<th>Item</th>
<th>Monthly Rental</th>
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<tr>
<td>3.1.1</td>
<td>[R] per month from [COMMENCEMENT DATE]</td>
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<td>3.1.2</td>
<td>[R] per month from [YEAR 2]</td>
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<td>3.1.3</td>
<td>[R] per month from [YEAR 3]</td>
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<td>3.1.4</td>
<td>[R] per month from [YEAR 4]</td>
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<td>3.1.5</td>
<td>[R] per month from [YEAR 5]</td>
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The annual compounded escalation rate inherent in the basic rental amount reflected above is [ESC]%.

Notwithstanding the fact that the agreement of lease commences on the [COMMENCEMENT DATE] as per Item 15 hereof the lessee shall be liable for its pro-rata share (proportionate) of rental calculated from the opening date i.e. [OPENING DATE OF CENTRE].
3.2 MONTHLY PARKING RENTAL (EXCLUDING VAT)

The annual compounded escalation rate inherent in the basic parking amount reflected above is [ESC]%.

Notwithstanding the fact that the agreement of lease commences on the [COMMENCEMENT DATE] as per Item 15 hereof the lessee shall be liable for its pro-rata share (proportionate) of parking calculated from the opening date i.e. [OPENING DATE OF CENTRE].

3.3 FIXED MONTH CHARGE (EXCLUDING VAT) FOR EMERGENCY ELECTRICITY SYSTEM:
R___.00/m²/month

The annual compounded escalation rate inherent in the basic emergency electricity system amount reflected above is [ESC]%.

Notwithstanding the fact that the agreement of lease commences on the [COMMENCEMENT DATE] as per Item 15 hereof the lessee shall be liable for its pro-rata share (proportionate) of emergency electricity system calculated from the opening date i.e. [OPENING DATE OF CENTRE].

3.4 VARIABLE COSTS (EXCLUDING VAT) FOR EMERGENCY ELECTRICITY SYSTEM:

Lessee’s electricity proportionate share for Emergency Electricity System [PRO RATA %]
(Note: This percentage may change from time to time as notified by the Lessor in writing)
4. OPERATING COSTS (EXCLUDING VAT)

The annual compounded escalation rate inherent in the basic operating costs amount reflected above is [ESC]%. 

Notwithstanding the fact that the agreement of lease commences on the [COMMENCEMENT DATE] as per Item 15 hereof the lessee shall be liable for its pro-rata share (proportionate) of operating costs calculated from the opening date i.e. [OPENING DATE OF CENTRE].

5. MARKETING CONTRIBUTION (EXCLUDING VAT)

The annual compounded escalation rate inherent in the basic marketing amount reflected above is [ESC]%. 

Notwithstanding the fact that the agreement of lease commences on the [COMMENCEMENT DATE] as per Item 15 hereof the lessee shall be liable for its pro-rata share (proportionate) of marketing calculated from the opening date i.e. [OPENING DATE OF CENTRE].

6. DEPOSIT

RENTAL DEPOSIT [AMOUNT]
ELECTRICITY DEPOSIT [AMOUNT]

7. DEED OF SURETYSHIP(S)

7.1. Name : [FULL NAMES AND SURNAME]
Identity Number : [IDENTITY NUMBER]
Domicilium (address for service of documents and notices) : [RESIDENTIAL ADDRESS 1]
[RESIDENTIAL ADDRESS 2]
[RESIDENTIAL ADDRESS 3]
8. **MINIMUM BUSINESS HOURS**
   - Monday to Friday [AS AGREED]
   - Saturdays [AS AGREED]
   - Sundays & Public Holidays [AS AGREED]

   The Lessor reserves the right to amend trading hours from time to time with due notice to the Lessee.

9. **PERMITTED USE OF THE PREMISES**

   The premises shall be used solely for the purpose of a [USAGE CLAUSE AS APPROVED] and for no other purpose whatsoever.

10. **PREMISES**
    - Shop No. [SHOP NO]
      - Edendale Mall
      - Cnr Edendale Main Road and Mount Partridge Road
      - Edendale
      - Pietermaritzburg
    - Parking Bay No. [PARKING NO]

11. **PROPERTY**
    - Portion 3 of Erf 441, Plessis-Laer as extended or reduced or altered from time to time.

12. **RENTABLE AREA OF THE PREMISES**
    - Approximately [AREA]m² [AREA IN WORDS] square metres as per Annexure “C & C1”

13. **OPTION TO RENEW**
    - A period of [PERIOD OF LEASE] years from the Expiry Date as per Item 16 hereof.

14. **BENEFICIAL OCCUPATION PERIOD**
    - [BENEFICIAL OCCUPATION PERIOD] Days

15. **COMMENCEMENT DATE**
    - [COMMENCEMENT DATE]

16. **EXPIRY DATE**
    - [EXPIRY DATE]

17. **ANNUAL TURNOVER PERCENTAGE**
    - [TURNOVER %]

18. **LESSEE’S FINANCIAL YEAR END**
    - [FINANCIAL YEAR END]

19. **LESSEE’S PRO RATA SHARE**
    - [PRO RATA %]
    (Note: This percentage may change from time to time as notified by the Lessor in writing)
20. **ASSESSMENT RATES AND OTHER TAXES (EXCLUDING VAT)**

   
   [RATES AND TAXES AMOUNT PER M²] per month
   (Note: This amount is an estimate and may change from time to time as notified by the Lessor in writing)

21. **SPECIAL TERMS**

   **AUTHORISED SIGNATORY & WITNESSES**
   **TO INITIAL HERE**

   21.1. Should the Lessee fail to open timeously, a penalty of R5,000.00 (Five Thousand Rand) (Excl. Vat) shall be imposed for each day that the Lessee fails to open and trade, in a manner of good faith.

22. **ADMINISTRATION CHARGES**

   Administration Charges  
   R  -

   VAT at 14%  
   R  -

   **TOTAL DUE**  
   R  -

23. **ANNEXURES**

   **ANNEXURE “A” – LESSEE’S AUTHORISING RESOLUTION**

   **ANNEXURE “A1” – LESSOR’S AUTHORISING RESOLUTION**

   **ANNEXURE “B” – DEED OF SURETYSHIP**

   **ANNEXURE “C” – PLANS OF SHOPPING CENTRE**

   **ANNEXURE “C1” – PLAN OF PREMISES**

   **ANNEXURE “D” – LESSEE CRITERIA DOCUMENT**

   **ANNEXURE “E” – CERTIFICATE BY CONSUMER**

   **ANNEXURE “F” – BANK GUARANTEE DRAFT**
The terms of this Agreement shall be binding on the parties hereto, their heirs, executors, administrator’s, successors in title or assigns.

SIGNED by the LESSOR acting through its duly authorised officer at ______________________ on this __________________ day of ________________________ 20__.  

AS WITNESSES:     For and on behalf of:  

1. ________________________  ____________________________________  

2. ________________________  [LESOR COMPANY DETAILS],  
DULY AUTHORISED

SIGNED by the LESSEE acting through its duly authorised officer at ______________________ on this __________________ day of ________________________ 20__.  

AS WITNESSES:     For and on behalf of:  

1. ________________________  [TENANT COMPANY DETAILS]  
TRADING AS [TENANT TRADING NAME]  

   Name :   PLEASE COMPLETE  
   ID. No. :  PLEASE COMPLETE  
   Capacity :  PLEASE COMPLETE  
   Signatory:  PLEASE COMPLETE  

2. ________________________
GENERAL CONDITIONS OF LEASE

IMPORTANT NOTE: Please read and consider this agreement and its annexures carefully as it shall constitute a binding agreement. You will be requested to declare that you understood the content of this entire agreement and its annexures and more specifically the fact, nature and effect of clauses (terms) next to which you were requested to specifically initial. Please note that initialling next to any clause (term) would not derogate the enforceability of any of the other terms of this agreement. Please do not disregard any terms not so emphasised as such terms will be binding and enforceable.

1. DEFINITIONS

In this Agreement:

1.1. the terms and conditions contained in the Agreement of Lease will take preference over any terms and conditions that is contained in Annexure’s hereto, in the event of conflicting interpretation;

1.2. words importing any one gender shall include the other, and words importing the singular shall include the plural and vice versa (the other way around);

1.3. the headings of paragraphs are used for reference only and are in no way to be deemed to explain, modify, amplify or aid in the interpretation of the Agreement;

1.4. reference to the Lessor shall at all times include reference to the Lessor’s duly appointed and authorised agents from time to time;

1.5. reference to persons shall include natural persons, juristic persons and trusts;

1.6. “beneficial occupation” shall mean the granting of access to the premises for purposes of fit-out thereof in accordance with the Lessee Criteria Document attached hereto marked Annexure “D”;

1.7. “common area” shall mean those portions of the building not actually let and not intended to be let by the Lessor or its duly authorised representatives as well as the property on which the building is situated;

1.8. “insurance of the building” shall mean the insurance policy or the contract documents relating to the insurance policy in terms of which the Lessor has insured the building;

1.9. “lease year” shall mean a period of 12 (Twelve) calendar months, commencing on the commencement date as stipulated in Item 15 of the Schedule;

1.10. “rentable area of the premises” shall mean the total extent of the premises as measured in accordance with the South African Property Owners’ Association (hereinafter referred to as “SAPOA”) method for measuring floor areas and certified by a registered architect;
1.11. “the basic monthly rent” shall mean the basic monthly rent and monthly parking payable by the Lessee to the Lessor as set out in Item 3 of the Schedule;

1.12. “the building” shall mean the building of which the premises form part as extended and altered from time to time, together with any parking area forming part thereof erected on the property;

1.13. “the commencement date” shall mean the date as stipulated in Item 15 of the Schedule;

1.14. “the expiry date” shall mean the date as stipulated in Item 16 of the Schedule;

1.15. “the Lessee’s pro rata share” shall mean the Lessee’s share expressed as a percentage of the rentable area of the premises in relation to the total rentable area of the building from time to time as recorded in Item 19 of the Schedule, being the percentage at the commencement date;

1.16. “the operating costs” shall mean the operating costs payable as recorded in Item 4 of the Schedule and as more fully described in Clause 7 of the general conditions of lease;

1.17. “the parties” shall mean the Lessor and the Lessee collectively;

1.18. “the premises” shall mean that portion of the building as demarcated on the plans attached hereto marked Annexure “C and C1”;

1.19. “the property” shall mean the property as described in Item 11 of the Schedule;

1.20. “total rentable area of the building” shall mean the gross lettable area of the building from time to time, as measured in accordance with the SAPOA method and certified by a registered architect;

1.21. “emergency electricity system” means the system installed (or to be installed) at the Property to supply emergency / temporary electricity to the Premises of Participating Lessees and certain common areas (in all instances excluding the operation of any air-conditioning system) in instances where periodic interruptions and/or failure occurs in the supply of electricity by the relevant local and/or municipal and/or other authority. The Lessee acknowledges that the consumption and supply of the emergency electricity will be within the guidelines provided by the Lessor in writing from time to time. Failure to comply with the guidelines shall result in immediate termination of the service as it is agreed that it will inter alia impact negatively on the total supply of the emergency / temporary electricity or supply to other Lessees;

1.22. “fixed monthly charge” means the charge as set out in Item 3.3 and 3.4 of the Schedule;

1.23. “participating Lessee/s” means a Lessee who elected to participate in the emergency electricity system and whose contribution towards the Lessee’s electricity proportionate share is paid up to date at all times.

1.24. “Lessee’s electricity proportionate share” means a percentage share as set out in Item 3.4 of the Schedule (at the signature date presuming that all Lessees requiring the service participate) of all the costs and charges relating to the emergency electricity system. The percentage share is the lettable area of the Premises, expressed as a percentage of the total lettable area of the premises of Participating Lessees in the Emergency Electricity System from time to time. (Note: This may change from time to time)
1.25 “proportionate share certificate” means the certificate issued by a financial manager of the Lessor confirming the Lessee’s Electricity Proportionate Share at any given time or for any given period. Such certificate shall be *prima facie* (at first glance) proof of such proportionate share.

1.26. all signatories to this Agreement of Lease warrant that they are duly authorised to sign this Agreement. A copy of a resolution containing such authorisation is attached hereto marked Annexure “A”, alternatively in possession of the person(s) signing this Agreement of Lease, failing the existence of such authorisation, it will be deemed that such signatory(ies) signed the Agreement of Lease in their personal capacity despite any other remedies available in law to the party whose signatory(ies) are authorised.

1.27 The provisions of this lease are severable. Should any one or more of the provisions of this lease be unenforceable then such provision(s) shall be severed from this lease and the remaining provisions shall be of full force and affect.

2. PREMISES

2.1. The Lessor hereby lets to the Lessee, which hires the premises described in Item 10 of the Schedule, with a rentable area with the approximate square meterage as described in Item 12 of the Schedule;

2.2. Upon completion of the premises, an architect’s certificate shall be issued in respect of the rentable area of the premises and should such measurement vary by 5% (Five Percent) or more from the area stipulated in Item 12 of the Schedule, then an adjustment shall be made to Items 3, 4, 5, 12, 19 and 20 of the Schedule by way of an Addendum to this Agreement;

3. LEASED PREMISES

3.1. This Agreement shall endure from the commencement date to the expiry date as recorded in Item 15 and 16 of the Schedule;

3.2. If the premises are not ready for occupation by the Lessee on the commencement date of this Agreement for any reason whatsoever, the Lessee shall have no claim for cancellation of this Agreement or for damages or any other right of action against the Lessor. In such event the Lessee shall accept occupation of the premises on the date on which they become available, which date shall be the commencement date of this Agreement. The date of escalation of the monthly basic rental and monthly operating costs and the date of expiry of the initial period of this Agreement shall not however change as a result of any change in the commencement date of this Agreement;

3.3. The Lessee shall be entitled to commence with shopfitting in accordance with Annexure “D” and other preparations for the purpose for which the premises are let for the number of days as recorded in Item 14 of the Schedule prior to the commencement date, being the beneficial occupation period. All the provisions of this lease will apply as if the necessary changes have been made (*mutatis mutandis*) during the beneficial occupation period, save that no rental will be payable. The Lessee shall be liable for all consumption charges during the beneficial occupation period, including but not limited to electricity, water and refuse removal;

3.4. If the Lessor is unable to give the Lessee beneficial occupation of the premises as stipulated herein, for any reason whatsoever, the Lessee shall have no claim for damages or right of
3.5. 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 expiry date, the lease shall continue on a monthly basis, however, the basic 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 term. The aforesaid 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.

4. RENEWAL PERIOD

4.1. The Lessee shall be entitled to renew this Agreement by giving written notice 6 (Six) months prior to the expiry date, for a further period as stipulated in Item 13 of the Schedule, upon such terms and conditions as the Lessor and the Lessee may agree upon, provided that written agreement is reached and signed by or on behalf of the parties at least 3 (Three) calendar months prior to the expiry date, failing such consensus this Agreement will terminate in the expiry date.

4.2. If the Lessee commits a breach of any term of this Agreement during the initial period of the Agreement, the Lessee’s right to renew this Agreement will automatically and without notice be cancelled when such breach has occurred, without prejudice to any other rights of the Lessor.

5. RENT AND TURNOVER RENT

5.1. For and in consideration of the use of the premises, the Lessee shall pay to the Lessor monthly in advance on or before the first day of each month, from the commencement date, or the date trading commences from the premises, whichever is the earlier, the basic monthly rent, operating costs, emergency electricity system and all charges as stipulated in this Agreement, in South African currency, free of any deduction or set-off whatsoever and free of bank charges and/or commission by way of electronic transfer into an account as directed by the Lessor in writing from time to time;

5.2. Notwithstanding the provisions of this Agreement, if the commencement date is not the 1st (First) day of a calendar month, a pro rata amount of rental and other charges shall be payable by the Lessee;

5.3. During the beneficial occupation period, the Lessee will not be liable to the Lessor for the payment of rent, but shall be liable for all other charges and imposts in terms of this Agreement;

5.4. The rent payable by the Lessee during the period of this Agreement shall be the greater of:

5.4.1. the basic monthly rent as specified in Item 3 of the Schedule; or

5.4.2. the turnover rent, based on the Lessee’s nett turnover, as defined in clause 5.5 and calculated in terms of this clause 5;
5.5. The percentage of annual turnover rent payable by the Lessee for the lease year is recorded in Item 17 of the Schedule;

5.6. “Nett turnover” shall mean for any lease year, the nett cash selling price, excluding VAT, of all goods and services sold from the premises by the Lessee and any sub-Lessee of the Lessee during the lease year, whether sold for cash, on terms of credit, on hire purchase or by mail, telegram, telephone, internet transaction or delivery elsewhere or otherwise, after deducting therefrom all discounts reasonably allowed during the period, all credits passed in respect of goods traded-in, returned or repossessed during that period and all amounts reasonably written off as bad debts during that lease year, provided that should any amounts so written off be subsequently recovered, then they shall be included in the nett turnover applicable to the lease year during which they are recovered;

5.7. “Lease year” for the purpose of calculating turnover rent shall mean a period of 12 (Twelve) calendar months or less, commencing on the commencement date and terminating at the end of the Lessee’s financial year as stipulated in Item 18 of the Schedule, alternatively the expiry date, whichever is the earlier.

5.8. Within 3 (Three) months after the end of each lease year, the Lessee shall pay to the Lessor the excess, if any, of the turnover rent over the basic rent for that lease year and shall deliver to the Lessor a statement of the nett turnover of the Lessee or of any sub-Lessee which may be trading in the premises for that rental period, certified by the auditors in case of a Company or the accounting officer in case of a Close Corporation, of the Lessee;

5.9. The Lessee shall keep all the books and accounting records of the Lessee for a period of 36 (Thirty Six) calendar months after the financial year end, available for inspection by the Lessor’s auditors. It will be regarded as a material breach of this Agreement should the Lessee not comply with this requirement;

5.10. The Lessor’s auditors or their representatives may inspect and take extracts from the books and accounting records of the Lessee;

5.11. The Lessee shall additionally submit to the Lessor on or before the 15th (Fifteenth) day of each month a written statement (unaudited), showing the nett turnover during the preceding month;

5.12. All amounts payable by the Lessee in terms of this Agreement are stipulated nett of Value Added Tax (VAT). The Lessee shall, in addition to any other amounts payable, pay any VAT or any other tax, which may be imposed by any authority pursuant to this Agreement;

5.13. Unless otherwise stated by the Lessor in writing, the receipt by the Lessor or its agents of any rent or other payment shall in no way whatsoever prejudice or operate as a waiver, rescission or abandonment of any cancellation or right of cancellation effected or acquired prior to such receipt. The Lessor shall be entitled in its sole and absolute discretion to appropriate and re-appropriate any amounts received from the Lessee or amounts to which the Lessee is entitled towards the payment of any cause of debt or amount owing by the Lessee to the Lessor whatsoever.

6. DEPOSIT

6.1. The Lessee shall on signature hereof pay cash to the Lessor in the amount as stipulated in Item 6 of the Schedule, as a rental deposit in addition to all other amounts due in terms of
this Agreement, which amount the Lessor or its agent, shall retain as security for the due compliance by the Lessee of its obligations arising from the Agreement and/or occupancy of the premises, and the Lessee shall be entitled to any interest on such deposit held by the Lessor;

6.2. The Lessee shall also pay the deposit in respect of electricity upon signature hereof;

6.3. Failure to pay the deposit as in 6.1 and 6.2 above shall constitute a material breach of the lease agreement and shall be dealt with in terms of Clause 23 hereof.

7. OPERATING COSTS

7.1. For the purpose of this clause 7 the following definitions shall apply:

7.1.1. “financial year” shall mean each financial year of the Lessor of which a portion or the whole of such financial year falls within the period of this Lease;

7.1.2. “operating costs” shall mean those costs actually incurred by the Lessor in respect of the building and/or land on which the building and its surrounding facilities are situated, in respect of:-

7.1.2.1. cleaning

7.1.2.2. security

7.2. The Lessee agrees to pay to the Lessor in addition to the basic rental provided for in this Lease, additional monies to reimburse the Lessor for operating costs with effect from the commencement date of this Lease, such reimbursement to be equal to the Lessee’s pro rata share, initially recorded in Item 4 of the Schedule. The operating costs shall be further calculated and payable as follows:

7.2.1. at the commencement of this Lease and thereafter at the beginning of each financial year, the Lessor shall send to the Lessee a statement of estimated operating costs for that financial year and shall indicate what the Lessee’s share of the estimated operating costs shall be, the said amount to be paid in equal monthly instalments in advance by the Lessee commencing on the commencement date, alternatively such earlier date if applicable;

7.2.2. within 90 (Ninety) days after the end of each financial year the Lessor shall send to the Lessee a statement of the actual operating costs incurred for the preceding financial year showing the share due by the Lessee. In the event that the amount prepaid by the Lessee in terms of sub-clause 7.2.1 above exceeds such share due by the Lessee, then the Lessor shall refund to the Lessee an amount equal to the excess;

7.2.3. in the event that the amount prepaid by the Lessee in terms of sub-clause 7.2.1 above is less than the share due by the Lessee, then the Lessor shall send the Lessee an invoice for the additional amount due, which amount shall be paid in full by the Lessee on the first day of the month following upon the month during which such invoice is forwarded to the Lessee;
7.2.4. if, during the course of any financial year, the Lessor has reason to believe that the operating costs for that financial year shall differ substantially from the estimates as set forth in sub-clause 7.2.1 above, then the Lessor shall be entitled to adjust the Lessee’s share of the estimated operating costs and to debit or credit the Lessee’s account in its books with an amount equal to the respective shortfall or excess in respect of the months of the financial year which precede the revised estimates and to advise the Lessee of an adjustment in future monthly instalments so that the Lessor’s estimated operating costs shall be on a reasonably accurate basis each financial year. Such adjusted estimates shall not be made more frequently than bi-annually;

7.2.5. the failure of the Lessee to pay its proportionate share of the operating costs calculated as above as and when due shall have the same effect as the failure to pay any rental and the Lessor shall be entitled to exercise all of the remedies provided for in the Lease in respect of such breach;

7.2.6. the Lessee’s obligation to pay any and all monies under this clause and the Lessor’s and Lessee’s obligation to make the adjustments referred to in this clause, shall survive any expiration or termination of this Lease;

7.2.7. the Lessee shall have the right to require of the Lessor by written notice delivered within 30 (Thirty) days of the date of posting by the Lessor of the statement of actual operating costs referred to in sub-clause 7.2.2, to furnish the Lessee with a certificate from the Lessor’s auditors confirming the actual operating costs incurred during the financial year to which such statement relates;

7.2.8. in the event of the Lessor having caused such an audit to be made and the actual operating costs shown by such auditor’s certificate differ by less than 5% (Five Percent) from the operating costs reflected in the statement of that financial year delivered in terms of sub-clause 7.2.2, then the Lessee shall pay to the Lessor the cost of such audit as certified by the Lessor’s external auditors;

7.2.9. should any dispute arise between the Lessor and the Lessee as to the reasonableness of any annual increase in any service charge or the amount for which the Lessee is liable in terms hereof, such dispute shall be determined by the Lessor’s auditors acting as experts and not as arbitrators and whose decision shall be final and binding on the Parties provided that such auditors shall be obliged, in making such determination, to have regard to whether the services in respect of which the operating costs are paid have been supplied at fair market costs and to call evidence from such persons as the auditors may regard as being suitably qualified to assist them in making their determination;

7.2.10. the Lessee’s obligations in any portion of a financial year in terms of this clause shall be calculated by the Lessor as being in the same proportion to the Lessee’s pro rata share of the operating costs for the whole of such financial year as the period of such financial year for which the Lessee has to pay basic rental in terms of Item 3.1 of the Schedule (or damages in lieu of rental) bears to the full period of such financial year.

7.3 The Lessee shall pay the Lessor amounts as recorded in Item 4 of the schedule, excluding Vat, as the Lessee’s contribution towards operating costs. In the event of the Lessor electing to appoint an independent contractor to render services, for purposes of maintaining
uniformity, in respect of operating costs as aforesaid, and if so directed in writing by the Lessor, the Lessee shall be liable for and pay the amount as stated in Item 4 of the schedule directly to such independent contractor.

8. ASSESSMENT RATES AND OTHER TAXES

8.1. The Lessee’s estimated share of assessment rates payable shall be the amount as stipulated in Item 20 of the Schedule per month, excluding VAT, as well as a pro rata share as stipulated in Item 19 of the Schedule of any increase or decrease thereon payable upon demand, which shall escalate or be reduced when the assessment rates are increased or decreased by the local authority;

8.2. The Lessee shall be liable for it’s pro rata share of any new tax or levy introduced by any local or other authority in respect of and/or relating to the premises, building or signage erected thereon.

9. FEES AND CHARGES PAYABLE BY THE LESSEE

In addition to the basic monthly rent, operating costs, assessment rates and emergency electricity system, the following monthly charges, excluding VAT, will be for the Lessee’s account:

9.1. Where any fees and charges are paid by the Lessee directly to the local authority/supplier, after written consent from the Lessor, and by contract with the local authority/supplier, the Lessee shall, if called upon to do so, exhibit to the Lessor the receipts in respect thereof, and where any such fees, rates and charges for which the Lessee is liable in terms of a contract with the local authority/supplier are paid by the Lessor, the Lessee shall make repayment to the Lessor immediately upon demand at the place where the rent is payable;

9.2. An electricity and water consumption deposit, equal to an amount of 3 (Three) month’s consumption shall be payable upon demand from the Lessor in the event of the Lessee failing to make prompt payments on the due dates in terms of this clause, and which deposit shall be held by the Lessor on the same terms as recorded in clause 6.1 above;

9.3. The Lessee’s share of sewerage and effluent disposal charges levied against the property calculated in accordance with the metered water consumption for the premises, if metered, and if sewerage and effluent disposal charges are charged on such basis by the local authority, alternatively the Lessee’s pro rata share of such charges;

9.4. The Lessee’s pro-rata share of (which for purposes of clause 9.4 shall exclude from the calculation of pro rata the lettable area of any Lessee exceeding 1,200m² (One Thousand Two Hundred square meters which may utilise its own refuse collection disposal and compaction) of refuse collection, disposal and compaction of its refuse and the cost of refuse removal bins and other containers that may from time to time be specified by the local authority or the Lessor;

9.5. The Lessee shall be liable to the Lessor for all charges in respect of electricity and water actually consumed upon the premises itself, as well as the Lessee’s pro rata share of all common area electricity and water consumption including external signage and air-conditioning at the same rate as he would have had to pay the original supply if the original supplier had supplied same to the Lessee directly.
9.6. In the event of the Lessor electing to appoint an independent contractor to render services for purposes of maintaining uniformity, in respect of meter reading and servicing of sub-meters as referred to in this Clause 9, and if so directed in writing by the Lessor, the Lessee shall be liable for and pay charges for meter reading and servicing of such-meters directly to such independent contractor.

9.7. Should the Lessee fail to pay the charges for electricity 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 electric current and water to the Lessee without further notice, and shall not be liable for any damages, including consequential damages, that may be sustained by the Lessee;

9.8. Any electrical charges, refuse removal, water or any other such charges shall be paid for by the Lessee from the beneficial occupation date, whether or not the Lessee trades from the premises;

9.9. The Lessee shall be liable for the water and electricity consumed by an air-conditioning unit and fire protection equipment as metered, if dedicated to the premises. However, should the unit service the premises but also be shared by any other premises in the building, then the metered charges divided by the area of the premises expressed as a percentage of the total area, which such air conditioning serves. If not metered, the Lessee’s share of such water and electricity consumption as calculated as a percentage of the total rentable area, which the air-conditioning unit serves. The installation of sub-meters shall be at the Lessor’s discretion and at its cost;

9.10. The Lessee shall furthermore be liable for the costs of purchase, installation, maintenance and repair of any and all hand held fire fighting equipment in its premises;

9.11. The Lessee shall furthermore be liable for the costs of servicing and maintaining any dedicated air conditioning unit, alternatively in case of a shared unit the costs divided by the area of the premises expressed as a percentage of the total rentable area the air conditioning unit serve, excluding common areas.

10. MARKETING

The Lessor shall establish a marketing fund, or similar body, for marketing and the promotion of the building of which the premises form part of and the Lessee shall pay monthly, upon being invoiced, an amount as stated in Item 5 of the Schedule. In the event of the Lessor electing to appoint an independent contractor to manage, for purposes of maintaining uniformity, the marketing fund or similar body as aforesaid, and if so directed in writing by the Lessor, the Lessee shall be liable for an pay the amount as stated in Item 5 of the Schedule directly to such independent contractor.

11. USE OF PREMISES

11.1. The Lessee shall use the premises, strictly limited to the purpose set out in Item 9 of the Schedule and acknowledge that it shall not have an exclusive right to any particular type of business, or portion thereof, being conducted in the building;

11.2. The Lessee shall utilise it for no other purpose whatsoever, without the prior written consent of the Lessor being obtained, which consent shall not be unreasonably withheld, and which consent shall also be obtained for installation and operation of all forms of vending machines, whether inside or outside the premises;
11.3. The Lessee acknowledges that the premises are suitable for the purpose of the Lessee nor that it will be granted any license or consent in respect of its business or that such license or consent will be renewed or extended.

12. LESSEE’S GENERAL OBLIGATIONS

12.1. The Lessee shall comply with all laws, by-laws and regulations relating to occupiers of business premises for the conduct of any business carried on in the premises, including but not limited to obtaining an occupation certificate from the local authority at its cost. 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 or similar scheme applicable to the property and not to do or permit to be done in or about the premises anything which may be or cause a nuisance or disturbance to other occupants of the building, or occupiers of neighbouring premises. Nothing in this Agreement shall entitle any Lessee or person or other party to oblige the Lessor to take action in terms of this clause, nor shall any Lessee or person or other party derive any rights from the provision of this clause;

12.2. If the Lessee is a restaurant or fast food outlet, 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;

12.3. The Lessee shall have the reasonable use of common areas, service roads, loading facilities, toilets and conveniences provided;

12.4. The Lessor shall have the right from time to time to make or vary house rules that govern the relationship between the Lessees and generally the use of the building and common areas and the Lessee undertakes to abide by and comply with these rules;

12.5. The Lessee shall 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) and the regulations found there under;

12.6. The Lessee shall not contravene or allow the contravention of the Tobacco Products Control Act 83 of 1993 (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;

12.7. The Lessee shall be obliged to erect signage at the premises subject to the prior written approval of the Lessor and shall at all times comply with the requirements of the Lessor as set out in Annexure "D" hereto. The Lessee will not be granted beneficial occupation of the premises until such written approval for its signage has been obtained from the Lessor;

12.8. The Lessee shall furthermore not commence trading from the premises until the approved signage has been installed. The Lessor may in its sole and absolute discretion waive this condition and allow the Lessee to take beneficial occupation of the premises and the Lessee will be obliged to take occupation of the premises. The Lessee shall not place any advertising signs or other matter on the windows or doors or outside the premises without the Lessor’s
prior written consent. Should such consent be given, the Lessee shall maintain such signs in
good order and condition and remove it upon vacating the premises and reinstate the
premises and any other area of the building where the sign was displayed;

12.9. The Lessee is obliged to submit the internal layout plans of the premises to the local
authority for approval. The Lessor may refuse beneficial occupation to the Lessee until such
plans have been approved by the local authority, and written proof of such approval is
submitted to the Lessor, without prejudice to the rights of the Lessor.

12.10. The Lessee:

12.10.1. hereby promises and undertakes to care for and maintain the premises for the
duration of this Agreement or any renewal period hereof and on the
termination or expiry thereof for whatever reason, to return and deliver the
same to the Lessor as recorded in this Agreement;

12.10.2. shall be considered to have acknowledged that the interior and exterior of the
premises is in a good state of repair and condition and all keys, locks, doors,
glass windows, electrical installation, air conditioning installation (if any),
thermostatic controls and regulators and other equipment pertaining to the
fittings, plumbing installations, sanitary equipment and appurtenances are in a
fit state of repair, unless it notifies the Lessor to the contrary, in writing, within
14(Fourteen) days after the date on which the premises were made available to
the Lessee;

12.10.3. shall on the termination or expiry of this Agreement return all the keys to the
premises which are in the possession of the Lessee to the Lessor;

12.10.4. furthermore undertakes not to do or permit any act or deed, which may or shall
obstruct the sewerage pipes, water pipes, storm water drainage system and/or
drains. Should such an incident occur, the Lessor will be entitled to recover the
cost of unblocking same from the Lessee and should the Lessor’s contractor
find that more than one Lessee has contributed to the blockage, the costs will
be recovered from the responsible parties on an equal basis;

12.10.5. shall in no way obstruct, or leave any item(s), whether by storage or otherwise
and whether temporarily or permanently on the pavements alongside the
building, staircases, passages or fire escape routes of the building or the yards
or any other portion of the building or the property;

12.10.6. shall be liable to the Lessor for all costs incurred by the Lessor in repairing any
damage to the building caused by the Lessee, its employees, agents and/or its
invitees;

12.10.7. shall not be entitled to interfere with existing or provide additional electrical,
air conditioning, plumbing and/or other fittings for the premises without the
prior written consent of the Lessor, which consent shall not be unreasonably
withheld and if such approval is forthcoming, provide such fittings and install
the same at the cost of the Lessee through a contractor approved by the
Lessor;

12.10.8. shall, where the Lessee requires the use of gas, apply to the Lessor’s selected
gas supplier for such supply and pay all charges in connection therewith. All

\[AUTHORISED SIGNATORY & WITNESSES\]
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internal reticulation, including but not limited to connection, gas flow sensor, solenoid unit and gas detection sensor unit, shall be the responsibility of the Lessee at its costs, however at all times to the approval of the Lessor’s selected gas supplier;

12.10.9. shall ensure the window and shop displays are bright, clean and aesthetically pleasing;

12.10.10. shall during the duration of this Agreement maintain the windows both internally and externally in a clean condition;

12.10.11. shall be liable for the maintenance and upkeep of the plate glass at the premises;

12.10.12. shall maintain a high degree of lighting so as to ensure the premises are inviting to customers;

12.10.13. shall ensure that the premises are adequately stocked and properly staffed and shall not obscure windows in any manner;

12.10.14. shall pay for the replacement and repair of any lamps, starters, ballast and any lamps used in the premises and shall not interfere with the electrical installation or any other installation or equipment belonging to the Lessor and shall not overload the electrical system or any other service;

12.10.15. shall not attach to the walls, ceilings and/or place on any part of the premises fittings or equipment which may be too heavy load therefore;

12.10.16. shall be responsible for maintenance and repair of electrical installations in the premises, including but not limited to the distribution board and further more furnish the Lessor with an electrical compliance certificate if requested in writing by the Lessor from time to time, and should the Lessee fail to do so the Lessor shall be entitled but not obliged to instruct its agents to obtain such certificate and the Lessee shall be liable for all costs relating thereto including but not limited to costs in respect of work to be performed.

12.10.17. shall provide and use bins or containers for refuse removal at its cost as may be necessary or specified by the local authority or the Lessor and keep the bins and containers in a neat and tidy condition and replace them from time to time;

12.10.18. shall not hold or permit to be held, any auction in or upon the premises without the Lessor’s prior written consent;

12.10.19. shall not allow any item on the premises, which may affect the validation of the Lessor’s insurance policy;

12.10.20. shall be obliged at the Lessee’s sole cost and expense to take out, through an insurance company approved in writing by the Lessor, such Lessee’s public liability insurance and plate glass insurance for such amount of cover acceptable to the Lessor and in accordance with sound business practice and to maintain such insurance in full force throughout the currency of the Agreement or the renewal thereof and furnish the Lessor with proof thereof upon written request.

AUTHORIZED SIGNATORY & WITNESSES
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12.10.21. shall under no circumstances be entitled to cancel this Agreement or have any claim or right of action whatsoever against the Lessor for any damages, loss or otherwise, nor be entitled to withhold or defer payment of rent by reason of the premises or any appliances or other installation, fittings and fixtures in the premises or the building being in a defective condition or falling into disrepair or any particular repairs not being attended to by the Lessor, or for any other reason whatsoever. The Lessee shall not have any right of cancellation or claim for damages, abatement of rent or otherwise against the Lessor by reason of the amenities in or on the premises being out of order for any reason whatsoever;

12.10.22. shall ensure that vehicles of its employees and agents are parked in the designated areas;

12.10.23. shall expedite the loading and unloading of vehicles to ensure that vehicles do not wait in the unloading area for unreasonably long periods;

12.10.24. shall not be entitled to exclusive use of any yards or toilets in the building;

12.10.25. shall not obstruct or interfere or tamper with any thermostats or air conditioning apparatus in the premises;

12.10.26. shall insofar as possible only unpack stock in the back of the premises;

12.10.27 Shall display emergency numbers on the premises as directed by the Lessor in writing.

12.11. The nature of the delivery services in the premises by the servants of the Lessor or its agents shall be at the sole discretion of the Lessor. Neither the Lessor nor its employees shall be liable for the receipt or non-receipt or the delivery or non-delivery of goods, postal matter or correspondence, nor shall they be liable for anything which the Lessee or any employee or any client, licensee, visitors or invitees of the Lessee may have deposited or left in the premises or in any part of the building. All goods brought by the Lessee into the premises, shall be placed there at its sole risk, and no responsibility whatsoever therefore is undertaken by the Lessor, its agents or employees.

13. LESSOR’S RIGHTS

The Lessor shall have the right:

13.1. At all reasonable times (including business hours) to carry out maintenance work in and on the premises and maintenance or building work and alterations, whether structural or otherwise, to the premises and building, and the Lessee shall have no claim of any nature against the Lessor, nor a remission of rental and other charges, in respect of any loss, damage, nuisance or disturbance whatsoever which it may suffer from or as a result thereof. In exercising this right the Lessor shall at all times have due regard to the Lessee’s business and will endeavour that such work does not unduly interfere with the Lessee’s business and is executed as expeditiously as may be expected in the circumstances;

13.2. In case of an emergency at any time, alternatively at all reasonable times inspect the premises and have access thereto for any other lawful purpose;
13.3. To affix a "TO LET" notice or any other notice required by any license or by law on the premises 6 (Six) months prior to the expiry of this Agreement, and the Lessee shall permit, at all reasonable times, during the period, any prospective Lessees to view the premises;

13.4. In the event of the Lessee failing to carry out its obligations in regard to maintenance and/or repairs of the premises, as provided for in clause 12.10.1, within 7 (Seven) days after being requested by the Lessor to do so, the Lessor is entitled to carry out such work and to be reimbursed by the Lessee forthwith for the reasonable costs incurred by the Lessor in doing so;

13.5. To prescribe, implement and exercise such reasonable measures in respect of the premises, building and property as it may in its sole discretion deem necessary to ensure the safety thereof;

13.6. To cede any of its rights in terms of this agreement to any third party without the consent of the Lessee.

13.7. To conduct a credit verification on the Lessee from time to time.

14. **LESSOR’S DUTIES**

14.1. The Lessor shall:

14.1.1. Clean and maintain the common areas, which will include the parking areas;

14.2. Keep and maintain the exterior walls and roof of the building in good order, repair and condition, fair wear and tear excepted;

14.3. Insure the building structure against normal eventualities as well as take out SASRIA insurance against political riot eventualities, and shall maintain such insurance policy for the duration of the Agreement;

14.4. In the event of the premises being served by means of an air conditioning plant controlled by the Lessor, determines rules in respect of switching on and off of the air conditioning plant, as per the trading hours referred to in Item 8 of the Schedule.

14.5. Keep the building and common areas insured against the risk of fire, explosion, special perils, and riots and maintain such insurance for the duration of this Agreement.

15. **LESSOR’S LIABILITIES**

15.1. The Lessor shall not be responsible or liable to the Lessee or its servants, agents, employees, members, clients or invitees;

15.1.1. for any loss or damage caused by or as a result of any fire, theft, flooding, riot, burglary, pilferage or similar cause, including the cost of malicious damages to the perimeter walls, shopfront, ceilings and roof sheeting of the premises as a result of any break-in or attempted break-in; and/or
15.1.2. for any accident, injury, loss of life or damage caused to them from whatsoever cause arising, including any failure in the premises, building and common area (or any part or portion thereof), through or while upon or while using the staircases, passages or any other portion of the premises, building or common areas, whatsoever such accident, injury, loss of life or damage may be caused, notwithstanding that any accident, loss of life or damage be occasioned by or arise from or be accountable to the negligence and/or act and/or omission of the Lessor, its principals, directors, servants or agents. The Lessee indemnifies the Lessor against any claim of whatsoever nature which may be made against the Lessor by any agent or servant, employee, member or invitees of the Lessee, for any loss or damage to the property of such claimant or any injuries suffered by such claimant or any injuries suffered by such claimant in, on or about the premises, building and common area, provided that the liability of the Lessor shall not be excluded in the event of such a claim arising from wilful conduct; and/or

15.1.3. for any damage which may be done to any of the assets of the Lessee including stocks-in-trade, fixtures, fittings, books, papers and otherwise, which may be in the premises, or to the Lessee, its employees, invitees, or licensees, which may occur in consequence of the overflow of water supply or any leakage or any plumbing works or any electrical fault or by reason of any of the elements of the weather or the failure on the part of the Lessor or its servants to carry out any work required of any of them in a proper manner or by reason of any defect in the premises or any portion thereof or any of the equipment of the Lessor, or as a result of any other cause whatsoever; and/or

15.1.4. for any damage or inconvenience which the Lessee may suffer owing to any difficulties from time to time in the supply of electrical current, water, gas, or other amenities or the complete cessation of such amenities, nor shall the Lessee be entitled to cancel this Agreement nor be entitled to an abatement of rent in respect of any such occurrence, provided that the Lessor shall within a reasonable time rectify such damage or defective condition, and such damages or defective condition is not caused by the Lessor’s wilful conduct;

15.2. Should the building or part therefore still be in the course of construction at commencement of this Agreement, the Lessee acknowledges that occupants must necessarily suffer a certain amount of inconvenience from building operations and from noise and dust resulting therefrom as well as from interruption in the supply of electricity, gas, water, air conditioning installation and/or other amenities and that it will have no claim against the Lessor for compensation or damages or for a remission of rental and charges by reason of any such inconvenience during the period of completion.

16. FIRE HAZARDS

The Lessee shall not at any time bring or allow to be brought or kept on the premises, any matter or thing or activity or explosive or highly flammable goods whereby the fire or any other insurance policy of the building may be liable to become void or voidable or whereby the premium for any such insurance may be increased. If the premium for such insurance is increased as a result of a contravention of this clause, whether with the Lessor’s written consent or not, the Lessor, without prejudice to any of its rights hereunder may recover from the Lessee the amount due in respect of any additional premium and the Lessee shall pay such amount immediately on notification from the Lessor or the insurance company to the effect that such additional premium has been charged.
17. ALTERATIONS, ADDITIONS AND REINSTATEMENT

17.1. Should any competent authority in respect of the grant or renewal of any licenses required by the Lessee to carry on the business for which the premises shall be altered, added to or renovated, the Lessor shall not be obliged, but the Lessee shall be obliged at its own expense to carry out such alterations, additions or renovations provided that the Lessor's prior written consent, which shall not be unreasonably withheld, is obtained and if the Lessor so requires, the work must be carried out by a contractor approved by the Lessor and under the supervision of an architect approved by the Lessor, with all costs for the Lessee's account;

17.2. The Lessee shall not effect or cause to allow to be effected to the premises or the building any alterations or additions, whether external, internal, structural, non-structural or of any other nature whatsoever, without the prior written consent of the Lessor;

17.3. Should the Lessee request the Lessor in writing to carry out to the premises or the building any alterations or addition, then it shall be in the sole discretion of the Lessor whether or not to agree to such request and should the Lessor so agree, the work shall be effected within a reasonable period from the date of receipt by the Lessor of such written request, provided that:

17.3.1. the plans and specifications for the work shall be prepared by the Lessee's architect and submitted to the Lessor for approval, which approval shall not be unreasonably withheld;

17.3.2. the work shall be carried out by the Lessor or by such contractor(s) as may be nominated by the Lessor under the supervision of the Lessor's architect and/or other professional consultant(s);

17.3.3. the professional fees and charges of the Lessor's architect, quantity surveyor, consulting engineer and/or other professional consultant(s) shall be borne by the Lessee;

17.3.4. should the Lessor so require, the Lessee shall pay to the Lessor prior to the commencement of the alterations or additions an amount equivalent to the estimated cost of such alterations or additions, as determined by the Lessor in consultation with the Lessor's architect, quantity surveyor, consulting engineer and/or other professional consultant(s) subject to adjustment between the parties after completion of the alterations or additions; and

17.3.5. if the Lessee is not required to pay the estimated cost of the alterations or additions to the Lessor in advance, then the Lessee shall within 7 (Seven) days after the issue of such certificate by the Lessor's architect or quantity surveyor pay to the Lessor an amount equal to the amount certified in the relevant certificate.

17.4. The Lessee shall pay to the Lessor on demand any additional municipal rates and taxes levied from time to time during the currency of this Agreement in respect of or by virtue of the additions and alterations effected in terms of this clause and in the event of the premiums payable by the Lessor in respect of any insurance policy relating to the building being increased by reason of any such alterations and additions. Then, as and when the Lessor shall be obliged to make payment of such additional premiums during the currency of this Agreement, the Lessee shall be obligated to refund to the Lessor the amount of such
17.5. The Lessee shall on cancellation, or prior to termination or expiry of this Agreement, at the Lessee's cost and expense reinstate the premises in:

17.5.1. the same good order and condition, as at the commencement date; alternatively

17.5.2. a basic condition consisting of a screed floor, white painted walls, standard ceiling; alternatively

17.5.3. any combination of the conditions described in clauses 17.5.1 and 17.5.2, as directed by the Lessor in writing;

in all instances, fair wear and tear excepted, and to make good and repair at the Lessee's cost and expense any disrepair, damage or breakage, or at the Lessor's written option, to reimburse the Lessor for the cost of so doing and/or the cost of replacing any broken or damaged articles;

17.6. The Lessee shall have no claim of whatsoever nature against the Lessor for the value or cost of any alterations or additions or other improvements effected to the premises of the building or the property, whether or not such alterations, additions or improvements are effected at the cost of the Lessee, and if the Lessor does not direct otherwise in terms of clause 17.5, the Lessor will become the owner thereof upon installation thereof;

17.7. The Lessee shall not be entitled, either during or after the termination or expiry of this Agreement, to remove any alterations, additions or other improvements to the premises, the building or the property, unless directed by the Lessor in terms of clause 17.5.

18. SUBLETTING, CHANGE IN CONTROL AND SALE OF BUSINESS

18.1. The Lessee shall not be entitled to sublet the whole or any part of the premises, save as follows:

18.1.1. the Lessee shall apply to the Lessor in writing for its consent to the subletting of the premises or part thereof giving, in regard to the proposed sublease, the name of the sub Lessee, the guarantor/s, if any, of the sub Lessee's obligations, the proposed date of commencement (which shall not be later than 60 (sixty) days from the date on which the Lessor receives the Lessee's application), the duration of the proposed sub-lease, the exact premises and the rental and any other considerations payable there under;

18.1.2. the Lessor, at its option, may either consent to the sub-lease in which case;

18.1.2.1. the Lessee may on receipt of written confirmation by the Lessor sublet the premises or part thereof as the case may be in accordance with the written application submitted to the Lessor in terms of 18.1.1 hereof;

18.1.2.2. the Lessee shall be obliged to account to and pay over on demand to the Lessor, any profit made arising out of any sub-lease entered into in respect of the premises;
18.1.2.3. the Lessee shall not give up occupation or possession of the premises or any portion thereof to any person whether as licensee, agent, occupier, custodian or otherwise, without the Lessor's prior written consent.

or alternatively the Lessor may give the Lessee written notice of its intention to enter into a direct written lease with the proposed sub-lessee, in which event on the commencement date of the new written lease entered into between the Lessor and the proposed sub-lessee this lease shall be cancelled and of no further force and effect. This cancellation shall, however, in no way detract from the Lessor's right to recover from the Lessee any amounts which have arisen in terms of this lease and which are still outstanding at the date of such cancellation or to enforce any obligations arising before the cancellation.

18.2. The Lessee shall not, without the Lessor's prior written consent, cede, assign, transfer, alienate, or otherwise dispose of its rights and/or obligations under this lease or pledge or hypothecate this lease.

18.3. Notwithstanding the provisions stipulated in clause 18, should the Lessee formally, request to assign or sub-let, the Lessor, at its option, may treat this as an offer by the Lessee to terminate this lease on 3 (three) calendar months' notice commencing from the first of the month following that in which the request to sub-let is made, and the Lessor shall have a period of 30 (thirty) days (during which the offer shall be irrevocable) in which to accept the offer.

18.4. If the Lessee is a company, no shares therein shall be transferred from its shareholders, nor may any shares be allotted to any person other than such shareholders, without the Lessor's prior written consent which, in the case of an allotment or transfer of shares which will still leave the control of the Lessee with the existing shareholders as at the date of signature hereof, or of a transfer of shares to a deceased shareholder's heirs, shall not be unreasonably withheld. Similarly, if the Lessee is a close corporation, no member's interest in such close corporation is to be allotted to any person other than another member of the close corporation without the Lessor's prior written consent. Any transfer or allotment of shares affected without such consent shall constitute a breach of the terms by the Lessee, justifying cancellation of the lease by the Lessor.

18.5. The Lessee shall not be entitled to sell its business conducted from the premises without the prior written consent of the Lessor, which consent shall be granted in the sole and absolute discretion of the Lessor and on conditions determined by the Lessor at the time;

18.5.1. 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:-

18.5.2. The name and identity number of the potential purchaser;

18.5.2.1. The name and registration number of the proposed purchaser in the event of a juristic person;

18.5.2.2. The proposed sureties and their identity numbers;
18.5.2.3. The experience, curriculum vitae and résumé of the potential purchaser of any individuals that will conduct the business;

18.5.2.4. The amount of Lessee installation allowances that was granted to the Lessee by the Lessor;

18.5.2.5. A copy of the proposed Agreement of Sale.

18.5.3. The surety(ies) to this Agreement shall remain liable, and where necessary shall be re-signed to record their liability for the duration of the unexpired portion of the Agreement of Lease, despite and notwithstanding an approval of the sale of the business;

18.5.4. In the event of the Lessee having received an installation allowance from the Lessor, the installation allowance will be repaid to the Lessor on the following formula

\[
\text{Amount of Allowance} \times \frac{\text{Unexpired Period of The Initial Period}}{\text{The Initial Period}}
\]

= Amount to be repaid by the Lessee to the Lessor;

18.5.5. Such repayment shall be payable upon demand from the Lessor;

18.5.6. The Lessee shall notify the “prospective purchaser” of the content of this Agreement and specifically but not limited to the usage clause and shall furthermore make no representation that such usage clause or any other term of this Agreement may alter or be amended or that such amendment shall be favourably considered by the Lessor.

19. PREMISES TO BE KEPT OPEN

19.1. The Lessee shall, and it is a material term of this Agreement, keep the premises open continuously during business hours and carry on its business during the whole term of this Agreement or any extension or renewal thereof, subject to its right to close the premises on special occasions or when general conditions render it reasonably appropriate to do, with the written consent of the Lessor. The Lessee agrees to the minimum business hours as set out in Item 8 of the Schedule;

19.2. The Lessee shall, ensure that it commences trading on the opening date of the centre.

20. DAMAGE OR DESTRUCTION OF PROPERTY

The Lessor may cancel this Agreement if:-

20.1. the premises are destroyed or are damaged to such an extent as to be substantially un-leasable; or

20.2. there is destruction or damage to the building or parts thereof, whether or not the premises are involved and the Lessor decides to put an end to the tenancies in the building in order to engage in reconstruction, renovation or rebuilding;
20.3. The cancellation under clauses 20.1 and 20.2 above shall be by written notice given by the Lessor within 60 (Sixty) days of the taking place of the event giving rise to the cancellation;

20.4. If there is damage to the premises or to the building so as to affect the enjoyment of the premises, but not to such extent as to entitle the Lessor to cancel, then the Lessee shall be entitled to a remission of rental and costs for the period during which and to the extent to which it is deprived of beneficial occupation and enjoyment of the premises, provided that such damage was not occasioned by any act or omission by the Lessee, its agents, representatives, invitees, contractors or employees.

21. RE-BUILDING

21.1. The Lessor may terminate this Agreement or any renewal thereof by giving the Lessee 6 (Six) calendar months' written notice to such effect in all or any of the following circumstances;

21.1.1. should the Lessor wish to demolish the building or the premises; or

21.1.2. should the Lessor wish to reconstruct and/or redevelop and/or renovate the building or the premises, provided always that such reconstruction and/or redevelopment and/or renovation be of a substantial and/or major nature.

21.2. The Lessor shall, however, have the right at any time to commence the reconstruction's and/or redevelopment and/or renovation of the building, other than the premises, and these operations may proceed while the Lessee is in occupation of the premises;

21.3. Notwithstanding the implementation of any work as contemplated in clause 21.2 above, the Lessee shall have no right to object to such work or to claim a rebate of rental and costs during the period in which the said work may be in progress, nor shall the Lessee have any claim for damages of whatsoever nature by reason of the earlier termination of this Agreement as provided for in clause 21.1 above.

21.4 It is specifically recorded that the purpose 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.

22. RELOCATION

22.1. The Lessor reserves the right at any time to relocate the Lessee from the premises to new premises in the building of substantially the same size. If the Lessor wishes to exercise this right it shall give the Lessee written notice to that effect, specifying;

22.1.1. the new location proposed for the premises;

22.1.2. the date upon which the relocation is to occur, which shall not be earlier than 60 (Sixty) days after the Lessor gives the notice;

22.2. The Lessee shall be entitled, within 14 (Fourteen) days after receipt of the Lessor's written notice aforesaid, to refuse the proposed relocation in which event the Lessor has the option to cancel this Agreement with effect from the expiry of the calendar month immediately following receipt of the Lessee's written notice.
succeeding that during which the Lessee gives notice of its refusal as aforesaid;

22.3. The other terms and conditions of this Agreement shall be of full force and effect. If the Lessee, within 14 (Fourteen) days after receipt of the Lessor's written notice aforesaid, give notice to that effect to the Lessor, this Agreement shall be cancelled upon the expiry of the calendar month immediately succeeding that during which the Lessee gives the notice of cancellation aforesaid. Notwithstanding such cancellation, the Lessor shall be entitled to recover from the Lessee any amounts outstanding under this Agreement but save as aforesaid, neither party shall have any claims against the other.

22.4. It is specifically recorded that the purpose 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.

23. **BREACH OF LEASE BY THE LESSEE**

23.1. Should the Lessee:

23.1.1. fail to pay any amount due by the Lessee in terms of this Agreement on the due date thereof; and/or

23.1.2. commits a breach of any of the terms of this Agreement, other than a breach referred to in Clause 23.1.1 above, and fails to remedy such breach within a period of 7 (Seven) days after receipt of a notice from the Lessor calling on it to do so; and/or

23.1.3. repeatedly breach any of the terms of this Agreement in such manner as to justify the Lessor in holding that the Lessee’s conduct is inconsistent with the intention or ability of the Lessee to carry out the terms of this Agreement; and/or

23.1.4. reach or attempt to reach a compromise with its creditors; and/or

23.1.5. permit any of its goods to be attached pursuant to a Court judgement and fail to take steps to have such attachment set aside; and/or

23.1.6. suffer any final judgement to be entered against it and fail to satisfy that judgement, and provided further that the Lessee has not noted an appeal or made an application for rescission of the said judgement (provided that such appeal or application is properly pursued); and/or

23.1.7. being a company or close corporation, be placed under provisional or final judicial management or provisional or final winding-up, whether voluntary or compulsory; and/or

23.1.8. be a franchise and its franchise agreement is cancelled or terminate or is interdicted on a temporary or permanent basis from trading as a franchisee in any respect; and/or

23.1.9. holds any license to conduct its business or part thereof and such license is revoked or not renewed or extended;
then, in any of such events, the Lessor shall be entitled, but not obliged, notwithstanding any previous waiver or anything to the contrary herein contained and without prejudice to its claims for any arrear rent or other sums payable hereunder or for any damages which it may suffer by reason of such breach and/or cancellation, including but not limited to costs of reinstatement of the premises at the Lessor’s election in terms of clause 17.5, and commissions in respect of re-letting of the premises, or to any other remedy which it may have against the Lessee arising out of this Agreement or in law, to either:

23.1.10. forthwith cancel this Agreement and to resume possession of the premises and upon so doing, to remove from the premises any goods situated therein. Any goods removed from the premises in terms of this clause shall be stored at the cost and risk of the Lessee; or

23.1.11. vary the terms of this Agreement by making it thereafter terminable by 1 (One) month’s written notice given by the Lessor;

23.2. Should any amount of rental not be paid in terms of clause 23.1.1, the Lessor shall be entitled, without prejudice to any of its rights in terms of this Agreement or in law, to display a notice that goods in the premises are judicially attached in perfection of the Lessor’s hypothec;

23.3. If the Lessee is in or has breached any material term of this Agreement, which shall include but not limit to, non-payment of any amount due whether for rental or utilities to the premises, the Lessee will not have an option to renew the Agreement as recorded in Item 13 of the Schedule;

23.4. Should the Lessee, at any time during the currency of this Agreement, commit a breach of clause 23.1.1, then the Lessor shall be entitled, but not obliged, to only accept future payments by way of cash, bank guaranteed cheque or electronic transfer and payment in any other form may, at the Lessor’s discretion, be refused and not regarded as valid in terms of this Agreement;

23.5. If for any reason or on any ground the Lessee occupies the premises and the Lessor disputes its right to do so, or the Lessee fails to reinstate the premises as directed by the Lessor and/or in terms of this Agreement, then, for the duration of such dispute or failure, the Lessee shall (notwithstanding that the Lessor may contend that this Agreement is no longer in force) continue to pay (without prejudice to its rights) an amount equivalent to the monthly basic rent and any other amounts due in terms of this Agreement (as escalated, if applicable), monthly in advance on the 1st (First) business day of each month and the Lessor shall be entitled to accept, render statements and recover such payments and such acceptance of payment and rendering of statements 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 made and received in terms of this clause 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. The failure by the Lessee to pay an amount stipulated in this clause shall itself constitute a material breach by the Lessee of its obligations. Should the Lessee unlawfully remain in the premises after expiry or termination of this Agreement, the rental and operating costs payable as holding over shall escalate at 20% (Twenty Percent) from the date of such unlawful occupation, as envisaged in clause 3.5 hereinbefore. Nothing in this provision will give the Lessee the right to occupy the premises if the premises are occupied unlawfully, nor would it give the Lessee the right should the Lessee’s occupation be lawful to occupancy other than on a calendar monthly basis;
23.6. Should the Lessee lawfully remain in the premises after the expiry date, then without prejudice to any rights of the Lessor, the rental, operating costs and other charges shall automatically escalate by the escalation rates as recorded in Items 3, 4 and 5 of the Schedule on the day following the expiry date and again escalate on each anniversary of the commencement date. Nothing in this provision will give the Lessee the right to occupy the premises if the premises are occupied unlawfully, nor would it give the Lessee the right should the Lessee’s occupation be lawful to occupancy other than on a calendar monthly basis.

23.7. Where the goods on the premises forms the object of the Lessor’s tacit hypothec, and where such hypothec is perfected by the Lessor, the Lessee shall be entitled to the proceeds from the sale of such goods should such goods be sold by the Lessee and such proceeds shall be used towards the payment of the indebtedness to the Lessor. Nothing contained in this clause shall afford the Lessee the right to sell, dispose of or alienate any of the assets or goods forming part of the Lessor’s hypothec.

24. INTEREST AND COSTS

24.1. In addition to the amount outstanding, the Lessee shall pay interest at the rate of 2% (Two Percent) compounded per month or part thereof, during the period while the payment is outstanding on all amounts due by it to the Lessor in terms or arising out of this Agreement;

24.2. The Lessor will furthermore be entitled to debit the Lessee’s account and recover from the Lessee, the costs of tracing agents, and legal costs on the attorney and own client scale, should any steps be taken by the Lessor pursuant to a breach of this Agreement by the Lessee and the other way around.

25. COSTS

25.1. The Lessee shall pay on demand, the costs of drawing up this Agreement as recorded in Item 22 of the Schedule.

25.2. In terms of Clause 103 of the Revenue Laws Amendment Act 60 of 2008, the Stamp Duties Act 77 of 1968 has been repealed. As such, Stamp Duty in no longer payable of Lease Agreements. Should the legislation governing the Stamp Duty be re-enacted after date of signature hereof then the full amount of any future Stamp Duty in respect of this lease whether at the date of execution thereof or at any time thereafter, shall be borne by the Lessee.

26. CERTIFICATES

26.1. Any dispute in terms of this Agreement regarding the calculation of any amount outstanding by the Lessee to the Lessor and/or the date upon which the outstanding amount is due by the Lessee to the Lessor shall be referred to the Lessor’s auditors or financial manager for computation, in their capacity as experts, and a certificate issued by the Lessor’s auditors or financial manager setting out the amount outstanding and/or the date upon which the outstanding amount is due, shall be prima facie (at first glance) proof thereof. Such certificate shall be valid as a liquid document in any Court of competent jurisdiction for the purposes of obtaining provisional sentence or summary judgement against the Lessee;

26.2. A certificate signed by any management employee of the Lessor (whose authority, qualification or appointment need not be proved) stating that any act or omission has
occurred on the part of the Lessee, shall be *prima facie* (at first glance) proof that such act or omission has occurred.

27. **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 from or incidental to such change of name.

28. **REASONABLENESS OF WITHHOLDING CONSENT**

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

29. **SURETYSHIPS**

29.1. If the Lessee is a juristic person, the Lessee shall procure that the person(s) in **Item 7 of the Schedule** executes and delivers to the Lessor simultaneously with signature of this Agreement, a Deed of Suretyship as per **Annexure "B"** attached hereto in terms of which the person(s) binds him/themselves, as the case may be, as surety and co-principal debtor, jointly and severally with all other sureties on behalf of the Lessee in favour of the Lessor for all the obligations of the Lessee in terms of this Agreement, its cancellation or any obligation originating from the occupation of the premises;

29.2. As and when a new director is appointed to the board of directors or, as the case may be, any new person becomes a member or a trustee of the Lessee during the currency of this Agreement, the Lessee shall notify the Lessor within 7 (Seven) days of such event thereof, which notice shall contain the name and address of the director, member or trustee concerned and the Lessor may then and shall be entitled to require such director, member or trustee to sign a Deed of Suretyship similar to the Deed attached hereto marked **Annexure "B"**;

29.3. If the Lessee is a partnership or any other unincorporated association of persons, all the partners or members, as the case may be, shall sign this Agreement on behalf of the said partnership or association and shall, by their signatures hereto, bind themselves as sureties and co-principal debtors with the Lessee for all its obligations in terms of this Agreement.

30. **WHOLE AGREEMENT AND NON-VARIATION**

30.1. This Agreement consisting of Schedule to General Conditions of Lease, General Conditions of Lease & Annexure’s thereto constitutes the whole agreement between the parties and no warranties or representations, whether expressed or implied, not stated herein shall be binding on the parties. No agreement at variance with the terms and conditions of this Agreement shall be binding on the parties unless reduced to a written agreement signed by or on behalf of both parties;

30.2. No relaxation or indulgence which the Lessor may show to the Lessee shall in any way prejudice its rights hereunder, in particular, no acceptance by the Lessor of rent after due date (whether on 1(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 made strictly on due date.
31. ADDRESS WHERE NOTICES AND DOCUMENTS ARE SERVED (DOMICILIUM CITANDI ET EXECUTANDI)

31.1. The Lessor chooses as address for service of documents and notices (domicilium citandi et executandi) and for service of any notices under this Agreement, at the address stipulated in Item 1 of the Schedule;

31.2. The Lessee chooses as address for service of documents and notices (domicilium citandi et executandi) as referred to in Item 2 of the Schedule;

31.3. All notices which are given by the Lessor to the Lessee hereunder shall be given to it at the premises or at such other address in the Republic of South Africa of which the Lessee may advise the Lessor by written notice duly received by the Lessor;

31.4. All notices given by the Lessee to the Lessor hereunder shall be given to it at the address specified in clause 31.1 of this Agreement, or at such other address in the Republic of South Africa of which the Lessor may advise the Lessee by written notice duly received by the Lessee;

31.5. All notices sent by either party to the other shall be delivered by hand or sent by prepaid registered mail;

31.6. All notices delivered or sent as aforesaid to the respective addresses provided for in this clause shall be deemed to have been received by the addressee on the date of delivery or on the 7 (Seventh) business day after posting, as the case may be.

32. COMPANY TO BE FORMED

If this lease is entered into by a person/s acting as a trustee/s on behalf of a company or close corporation or trust to be formed, then;

32.1. The trustee/s personally jointly and severally warrant/s to the Lessor that the company or close corporation or trust to be incorporated or formed will, within sixty (60) days from the date of this agreement;

32.1.1. be duly formed and incorporated; and

32.1.2. duly adopt, ratify and confirm without modification this agreement; and

32.1.3. take all other steps necessary to render this agreement binding on it; and

32.1.4. deliver up its Certificate of Incorporation and Memorandum and Articles of Association in the case of a company, its Founding Statement and Association Agreement (if any) in the case of a Close Corporation and the Certificate of Appointment of Trustees and Trust Deed in the case of a trust together with a true copy of the resolution referred to in 32.1.1 duly certified by the chairman of the meeting.

32.2. The trustee/s personally hereby jointly and severally bind themselves to the Lessor that, failing compliance with the provisions of 33.1 hereof, they shall personally be bound by all the obligations and entitled to all the rights of the Lessee in terms and arising out of this
32.3. In the event of proper compliance with the provisions of 32.1 hereof the trustee/s shall be bound by all the terms of the Deed of Suretyship incorporated herein and signed by them in their personal capacities but in the event that they shall be personally bound by all the obligations and entitled to all the rights of the Lessee by virtue of non-compliance with the provisions of 33.1 hereof, then the Deed of Suretyship shall be regarded “pro non scipto:”

33. LIABILITY OF PARTNERS

If the Lessee is a partnership then by their signature hereto, the individual partners of the Lessee bind themselves, both as a partnership and jointly and severally as individuals, for all the Lessee’s obligations to the Lessor under or arising out of this Lease. Similarly joint Lessees shall be jointly and severally liable for all their obligations as Lessee’s under or arising out of this Lease.

34. DEATH OF LESSEE

Where the Lessee is a natural person and where such Lessee dies during the currency of this Agreement of Lease or any extension thereof, the Lessor may either;

34.1. by giving One (1) calendar month’s written notice addressed to estate late of the Lessee and delivered to the domicilium citandi et executandi (address for service of documents and notices), cancel the Agreement of Lease and resume possession of the premises, without prejudice to its claim for arrear rental and costs and other amounts owing hereunder or for damages which may be owing to it in terms of the Agreement;

or

34.2. vary the Agreement of Lease by making it terminable on One (1) calendar month’s written notice addressed to estate late of the Lessee and delivered to the domicilium citandi et executandi (address for service of documents and notices), given by the Lessor.

35. EMERGENCY ELECTRICITY SYSTEM

Notwithstanding anything to the contrary contained in this Agreement:

35.1. The Lessee acknowledges that the consumption and supply of the emergency electricity system will be within the guidelines provided by the Lessor in writing from time to time. The Lessor undertakes to determine such guidelines once the emergency electricity system has been installed taking into account inter alia the loading required by the Lessee at the time of installation. Failure to comply with the guidelines shall result in immediate termination of the service.

35.2. In addition to the rental and other amounts due in terms of the Agreement, the Lessee shall contribute the following towards the emergency electricity system:

35.2.1. fixed monthly charge: as recorded in Clause 1.22 above. The fixed monthly charge is payable monthly in advance on the first day of each calendar month without deduction or set-off;

35.2.2. variable monthly charge: Calculated as the Lessee’s electricity proportionate share (as recorded in Clause 1.24 above of):
35.2.2.1. the actual diesel and other consumables consumed by the emergency electricity system, which will be invoiced by the Lessor monthly in arrear and payable by the Lessee upon demand, and

35.2.2.2. the emergency / temporary electricity supplied by the emergency electricity system. To this extent the Lessor will install a meter at the emergency electricity system. If applicable, the Lessor will monthly in arrear, pass a credit to the Lessee based on the Lessee’s electricity proportionate share of the electricity consumed by the Lessee for a period equivalent to the period during which periodic interruptions and/or failure in the supply of electricity by the relevant local and/or municipal and/or other authority occurs and the emergency electricity system supplied such electricity.

35.3. The Lessee hereby agrees that a Certificate issued by the Lessor and or its agent will be prima facie proof of the Lessee’s contribution to emergency electricity system as set out in Clauses 35.2.1 and 35.2.2 above.

35.4. The Lessee’s contribution to the emergency electricity system shall be paid, monthly in advance on the first day of each calendar month without deduction or set-off into a bank account nominated by the Lessor from time to time.

35.5. The Lessee hereby acknowledge and agree that if there is any increase in the Lessor’s insurance premium as a result of the acquisition, establishment, installation and operation of the emergency electricity system, the Lessee shall refund to the Lessor upon demand any increase in such insurance premium. A Certificate issued by the Lessor or its agent from time to time shall be prima facie proof the increase in such insurance premium and refund.

35.6. The Lessee acknowledges that it will be responsible to take steps, at its own cost, to protect its equipment, such as without limitation connecting its computer and related equipment through suitable uninterrupted power supplies (“UPS”) or similar devices.

35.7. Neither the Lessee nor any of its employees will, for the duration of the Agreement, interfere with or endeavour to make changes to the emergency electricity system.

35.8. The Lessee will accommodate a complete shut down of electricity supply to enable the Lessor to effect the installation and/or repairs and/or maintenance to the emergency electricity system, if required and if such installation and/or repairs and/or maintenance cannot be done after normal business hours. The provisions of this clause shall apply mutatis mutandis to the instance where the local and/or other competent authority requires a shut down of any service provided by such authority.

35.9. The Lessee undertake not to vary the emergency / temporary electricity demand and which the emergency electricity system can supply without prior written notice to the Lessor whereafter the Lessor may decide to include or exclude such additional demand from the emergency / temporary electrical supply in its discretion.

35.10. The Lessor shall use its best endeavours to maintain the emergency electricity system and ensure that adequate fuel is available (subject to supply) however will not be responsible or liable for any interruption in the supply of emergency / temporary electricity generated by the emergency electricity system.
35.11. The Lessor shall comply with the applicable legislation with regard to the establishment, installation and maintenance of the emergency electricity system.

35.12 The Lessee will have no claim of whatsoever nature against the Lessor or its agent and may not cancel the Agreement as a result of or due to equipment failure affected by the periodic power failure and/or load-shedding and any surges as a result of the switch to emergency / temporary electricity supplied by the emergency electricity system or any interruption due to maintenance or work performed on the emergency electricity system and related equipment or the use of such emergency / temporary electricity.

36. LIMITATION OF LIABILITY - NEGLIGENCE

36.1. Notwithstanding any provision in this agreement, same shall not limit or exempt liability attributable to gross negligence.

36.2. The Lessee warrants that any information regarding goods or services, which are presented to the Lessor for any purpose, including but not limited to advertising, marketing or publishing, shall not be in contravention of the Consumer Protection Act 68 of 2008. The Lessee hereby indemnifies the Lessor and holds the Landlord harmless in respect of any claim whatsoever resulting from a breach of this warranty.

36.3. The parties record that, should the Lessee or its agents request assistance from the Lessor or its agents in case of an alleged shop lifting or other alleged crime committed by any party and such assistance is granted (without being obliged to do so), the Lessee hereby indemnifies and holds the Lessor or its agents harmless against any claims resulting from such assistance by the Lessor or its agents. The aforesaid indemnity only applies to the extent that the Lessor or its agents do not act unlawful in granting such assistance, and such unlawfulness is attributing to such claim.

37. ARBITRATION

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 landlord's right to evict the tenant, 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, to claim payment of recoveries, to relocate the tenant, 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, as well as in respect of the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this agreement.

37.2 Any one of the parties will be entitled to refer a dispute to arbitration in accordance with the provisions of this Clause 37.
37.3 The referring party shall notify the non-referring party of its intention to refer such dispute to arbitration in terms of this Clause 37 by notice in writing of its intention to do so (“the arbitration notice”).

37.3.1 The arbitration notice must be delivered to the non-referring party’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) proposed for appointment as arbitrator.

37.3.2 The non-referring party shall have a period of 5 (five) calendar days from delivery of the arbitration notice to elect 1 (one) of such advocates as arbitrator and to inform the referring party thereof, alternatively propose 3 (three) practicing advocates with no less than 10 (ten) years’ experience for appointment as arbitrator to the referring party within such period of 5 (five) calendar days.

37.3.3 In the event of the non-referring party failing to elect 1 (one) of such advocates as arbitrator and informing the referring party thereof (as alluded to in Clause 37.3.3 above) within such period of 5 (five) calendar days or in the event of the non-referring party failing to propose three practising advocates within a period of 5 (five) calendar days (as alluded to in Clause 37.3.3 above) or in the event of the parties failing to agree upon the identity of the arbitrator within 3 (three) calendar days from the date on which the non-referring party proposed its 3 (three) names as alluded to in Clause 37.3.3 above, any one of the parties will forthwith be entitled to request the Chairman of the Johannesburg Bar to appoint an advocate practicing at the Johannesburg Bar (with no less than 10 (ten) years’ experience) as arbitrator, and which appointment will be final and binding on the parties.

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

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

37.4.2 The arbitration proceedings shall be conducted as expeditiously as possible and on the basis that the arbitration hearing be finalised within 30 (thirty) calendar days from the date of appointment of the arbitrator, as alluded to in Clause 37.3 above. As the aforesaid 30 (thirty) calendar days period must be met, the arbitrator will, at the outset, lay down the time periods so as to ensure that such 30 (thirty) calendar days period be met, and which then, in itself, entails that the arbitrator will amend
the time periods, provided for in the Arbitration Rules, so as to meet this 30 (thirty) calendar days deadline.

37.4.3 The arbitrator shall make his/her award within 10 calendar days following the finalisation of the arbitration hearing.

37.4.4 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).

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

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

37.4.7 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).

37.4.8 The arbitrator shall be entitled to determine his/her own jurisdiction and shall be entitled, mero motu (of one's own accord), to raise matters mutatis mutandis (as if the necessary changes have been made) as if the dispute was heard before a Judge in the High Court.

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

37.6 Subject to the other provisions of this Clause 37, 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 37 will prevail in so far as legally tenable.

37.7 Without detracting from the effect (if any) of any other act taken by any party which may affect the issue of prescription, the parties irrevocably agree and acknowledge that the arbitration notice shall interrupt prescription and shall be deemed to constitute the service of a process for the purpose of interrupting prescription in terms of Section 13 of the Prescription Act, No. 68 of 1969 (or, as the case may be, the corresponding provision in any amendment thereto or in any replacement legislation).

37.8 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.

37.9 Pending finalisation of the arbitration, the normal provisions embodied in this agreement pertaining to holding-over will apply.

37.10 The provisions of this Clause 37:

37.10.1 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;

37.10.2 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.

37.11 Nothing which is contained in this Clause 37 shall preclude:

37.11.1 anyone of the parties from seeking interim and/or urgent relief (including, but not limited to, an application to attach any items falling under the landlord’s hypothec, an interim interdict interdicting the removal of any items from the premises or the property of which the premises form part) from the arbitrator;

37.11.2 anyone of the parties from seeking interim and/or urgent relief (including, but not limited to, a rent interdict, rent interdict summons, an application to attach any items falling under the landlord’s hypothec, an interim interdict interdicting the removal of any items from the premises or the property of which the premises form part) from a Court of competent jurisdiction, and insofar as the High Court is approached in respect of any such relief, the parties hereby consent to the jurisdiction of the South Gauteng High Court.

38. The terms of this Agreement shall be binding on the parties hereto, their heirs, executors, administrators, successors in title or assigns.
ANNEXURE “A”

AUTHORISING RESOLUTION

PLEASE ADD IN
ANNEXURE “A”

RESOLUTION – CLOSE CORPORATION

I/We, ________________________________ do hereby warrant that;

1. On ________________________________ the Members of CK No. __________________ passed a Resolution in

the following terms:

“RESOLVED that the Close Corporation enter into an Agreement of Lease substantially in the form of the lease to which this certificate is annexed, submitted to the Members of the Close Corporation, and that ________________________________ (name of Members or authorised signatory) be authorised to execute the lease and any other documents that may be necessary to give effect thereto”.

2. The lease is substantially in the form of the lease that was submitted to the Members of the Close Corporation.

___________________________    ____________________ _________________
Date                       Authorised Signatory

___________________________    ____________________ _________________
Date                      Witness
ANNEXURE “A”

RESOLUTION – COMPANY

I, ______________________ do hereby warrant that;

1. On ______________________ the Directors of ______________________ passed a Resolution in the following terms:

   “RESOLVED that the Company enter into an Agreement of Lease substantially in the form of the lease to which this certificate is annexed, submitted to the Directors of the Company, and that ______________________ be authorised to execute the lease and any other documents that may be necessary to give effect thereto”.

2. The lease is substantially in the form of the lease that was submitted to the Directors of the company.

3. The company is entitled to enter into a Lease Agreement in terms of its Memorandum and Articles of Association. The procedure is the procedure adopted hereby.

___________________________  ____________________ _________________
Date                             Authorised Signatory

___________________________  ____________________ _________________
Date                                                        Witness
ANNEXURE “B”

DEED OF SURETYSHIP

I/We, the undersigned,

[TENANT FULL NAMES AND SURNAME]
[I.D. NO.]

hereby bind myself/ourselves as surety(ies) and co-principal debtor(s), jointly and severally to:

[LESSOR COMPANY DETAILS]
[REG. NO.]
(hereinafter referred to as the Lessor)

for the due and proper fulfilment of all the obligations of:

[TENANT COMPANY DETAILS]
[REG. NO.]
(hereinafter referred to as the Lessee)

its successors-in-title or assigns, arising from or out of or in terms of a lease between the Lessor and Lessee dated to which this Deed of Surety is annexed as Annexure “B” in respect of certain premises being Shop [NO], [CENRE NAME AND PHYSICAL ADDRESS] (hereinafter referred to as “the lease) or any renewal, amendment, breach or cancellation of the lease or relating to the occupancy by the Lessee of the premises referred to above.

I, We agree and declare that:

1. No act or indulgence, relaxation or grace by the Lessor to the Lessee (including any act of accepting payment after due date or in accepting a lesser sum than the amount due) shall prejudice or affect the Lessor’s rights in terms hereof, and if any action by the Lessor result in a novation of any debt or liability arising out of or from the lease then I/We undertake and agree to be similarly bound as surety(ies) and co-principal debtor(s) in favour of the Lessor for such novated debt or liability.

2. This suretyship shall remain in force as a continuing covering security until such time as all the obligations of the Lessee to the Lessor in terms of the lease (or any renewal, amendment, breach or cancellation thereof) have been duly and properly fulfilled.

AUTHORIZED SIGNATORY & WITNESSES
TO INITIAL HERE
3. I/We renounce the benefits of excussion, division and cession or action, the full meaning and effect whereof I/we know and understand.

4. The Lessor shall be entitled at its option to institute any legal proceedings which may arise out of or in connection with this suretyship in any Magistrate’s Court having jurisdiction in respect of the surety’s person, notwithstanding the fact that the claim or value of the matter in dispute might exceed the jurisdiction of such Magistrate’s Court in respect to the cause of action.

5. If this deed has been prepared in form for signature by more than on surety, then each surety who signs it acknowledges and records that not withstanding the fact that it provides for signature hereof by other sureties, there is a separate, distinct and independent contract of suretyship brought into existence by each surety who does sign it. Accordingly if for any reason any surety named herein shall fail to sign this Deed of Suretyship for any reason whatsoever or if this suretyship shall for any reason cease to be or is not binding on any one or more of the sureties then the obligations of the other(s) shall be binding and remain of full force and effect in terms hereof.

6. In the event of the Lessee becoming insolvent, or if the Lessee be a company, in the event of it being wound up either voluntarily or by the court and the trustee or the liquidator (as the case may be) terminating the aforementioned lease or any renewal thereof, this suretyship shall extend to and cover all loss which may be sustained by the Lessor by reason of the non-performance of the terms of such lease and I/we shall be jointly and severally to the Lessor as surety(ies) and co-principal debtor(s) in the actual sense of the word, for the due payment in full of all such loss notwithstanding any limitation on any claim against the Lessee.

7. Without derogating from the generality of any of the provisions of the suretyship or the ambit of the obligations embraced, my/our liability shall cover all claims for compensation on or damages which the Lessor may at any time have as a result of the cancellation or termination of any contract between the Lessee and the Lessor howsoever arising, including without limitation the termination of any lease between the Lessee and the Lessor (or the Lessor’s predecessor in title) which takes place pursuant of the provisions of section 37(1) of the Insolvency Act, No. 24 of 1936, as amended, or, where the Lessee is a company, as applied by virtue of the provisions of the Companies Act, No. 61 or 1973, as amended, or pursuant to any corresponding legislation.

8. It is agreed and declared that all admissions and acknowledgements of indebtedness by the Lessee(s) shall be binding on me/us.

9. If the lease has been signed on behalf of a company to be formed then this suretyship is for the obligations of that company when formed.

10. I/we choose domicilium citandi et executandi as described below.
Thus done and signed at ___________________________ ___ on this the _______________ day of ______________ 20__,

[TENANT FULL NAMES AND SURNAME]  
[I.D. NO.]  
Domicilium citandi et executandi:  

[TENANT RESIDENTIAL ADDRESS 1]  
[TENANT RESIDENTIAL ADDRESS 2]  
[TENANT RESIDENTIAL ADDRESS 3]  

__________________________________________  
SIGNATURE  

Witnesses:  
1. __________________________________________________________  
   Signature ___________________________________________________________________ 
   Name in Full ___________________________________________________________________  

2. __________________________________________________________  
   Signature ___________________________________________________________________ 
   Name in Full ___________________________________________________________________  

AUTHORISED SIGNATORY & WITNESSES TO INITIAL HERE
ANNEXURE “C”

CENTRE LAYOUT PLAN

AUTHORISED SIGNATORY & WITNESSES TO INITIAL HERE
PLAN OF PREMISES

ANNEXURE “C1”
ANNEXURE “E”

A CERTIFICATE ISSUED BY A LESSEE WHO IS CLASSIFIED AS A CONSUMER IN TERMS OF THE CONSUMER PROTECTION ACT

Failure to sign this certificate shall in no way affect the validity of this agreement

I, [TENANT FULL NAMES AND SURNAME] on behalf of the LESSEE being duly authorised, confirm that I have read and understood the terms and conditions of this Agreement of Lease. All the clauses in the Agreement of Lease were read by me and the fact, nature and effect of all the clauses were understood by me as well as the fact that some of these clauses contain terms that may affect the LESSEE now or in the future.

I understand that by bringing these terms and conditions to my attention it does not have any effect on the legal standing or enforceability of any other terms and conditions not highlighted or brought to my attention and which depending on any circumstances may affect the LESSEE when enforced. I confirm that I have read and understood the entire Agreement of Lease.

Only to be completed by juristic persons who qualify as a consumer:

I hereby declare, on behalf of the LESSEE being [TENANT COMPANY DETAILS] that the LESSEE qualifies as a consumer in terms of the Consumer Protection Act 68 of 2008, as amended from time to time.

SIGNED: ________________________________

FULL NAMES IN PRINT: _______________________

DATE: ___________________________________
ANNEXURE “F”

GUARANTEE

[LESSOR COMPANY DETAILS]
Trading As [SHOPPING CENTRE NAME]
[LESSOR DOMICILIUM 1]
[LESSOR DOMICILIUM 2]
[LESSOR DOMICILIUM 3]

TRANSACTION NO. __________________________
DATE _______________________________________

LEASE GUARANTEE BETWEEN __________________ AND ________________________

We, _________________________ Bank of South Africa Limited, Registration Number ____________ (“the Bank”), advise that we are holding the sum of R_______________ (________________________________) (“the Guaranteed Amount”) on behalf of ___________________________ Trading As ________________ (hereinafter referred to as “the Lessee”) at the disposal of [LESSOR COMPANY DETAILS] Trading As [SHOPPING CENTRE NAME] (hereinafter referred to as “the Lessor”) for the lease agreement of certain premises situated at Shop [NO], [CENTRE ADDRESS] (“the Lease Agreement”). The Bank will pay on receipt of a first written demand from the Lessor, stating that the amount is due and payable and that the Lessee is in breach of the Lessee’s obligations under the Lease Agreement, provided that the claimed amount does not exceed the Guaranteed Amount.
This Guarantee is issued in favour of [LESSOR COMPANY DETAILS] and/or its successor in title. This Lease Guarantee is neither negotiable nor transferable and is restricted to the payment of a sum of money only and is limited to the Guarantee Amount, save in the event that the property which is the subject of this Lease Guarantee is sold, in which event the Lessor or its successor in title may, in terms of the Lease Agreement referred to herein, request the Bank in writing to transfer this Lease Guarantee to the new Lessor or the Lessor’s successor in title. The Bank undertakes, upon receipt of such written request, to assist the new Lessor or the Lessor’s successor in title to transfer the guarantee.

The Bank’s liability under this Guarantee is principle in nature and is not subject to any agreement. The Bank’s liability shall not be reduced or in any way be affected by any alteration of any agreements entered into, or to be entered into, with the Lessor.

The Bank will pay on demand and will not determine the validity of the demand or the correctness of the amount demanded, or become party to any claim or dispute of any nature, which any party may allege.

This Guarantee is neither negotiable nor transferable, is restricted to the payment of a sum of money only and is limited to the Guaranteed Amount.

This Guarantee will expire three months after the termination of this lease on the __ day of _____ or upon payment of the Guaranteed Amount in full by the Bank, whichever event occurs first, and no further claims will then be considered.

The original Guarantee must be returned to the Bank, either against payment of the Guaranteed Amount or expiry.

The Bank may at any time withdraw from this Guarantee by giving 3 (three) months written notice and make payment of the Guarantee Amount by way of an electronic fund transfer.
into the following account upon which the original Bank Guarantee will be returned by the Lessor:

Account holder (Lessor) : [ACCOUNT HOLDER]
Bank : [BANK]
Branch Code : [BRANCH CODE]
Account number : [ACCOUNT NUMBER]

Any change to the terms and/or conditions of this Guarantee, must first be agreed to in writing by the Lessor, the Lessee and the Bank.

FOR: ______________________________________ BANK OF SOUTH AFRICA LIMITED

at _______________________________ on ______________________________________

_________________________________________  ______________________ ________________
(Authorised Signatory)   (Authorised Signatory)

AS WITNESSES :

1. __________________________

2. __________________________