



# HIGHVELD MALL

## AGREEMENT OF LEASE

**Resilient Properties (Pty) Limited**  
**Registration Nr.: 2002/016890/07**

**Changing Tides 91 (Pty) Limited**  
**Registration Nr.: 2001/012757/07**

**Mogwele Trading 278 (Pty) Limited**  
**Registration Nr.: 2005/005957/07**

**Retraction Props 7 (Pty) Limited**  
**Registration Nr.: 2005/034956/07**

trading as **HIGHVELD MALL**

(hereinafter referred to as the "Lessor")  
represented herein by .....  
in his capacity as .....  
who is duly authorised to do so,

and

.....  
trading as .....  
(hereinafter referred to as the "Lessee")  
represented herein by .....  
in his capacity as .....  
who warrants he is duly authorised to do so.

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## TERMS AND CONDITIONS

### 1. INTERPRETATION AND DEFINITIONS

1.1. In this Agreement of Lease and in the Annexures hereto:

- 1.1.1. "the appurtenances" – means all the installations and appliances both electrical and mechanical in and on the PREMISES, of which the LESSOR is the owner, including, without limiting the generality of the foregoing, keys, locks, windows, glass, water supply system, sewerage and water pumps, basins, water taps, toilets, kitchens, ablution units, sprinkler systems, light fittings, electrical switches, power plug points, power skirting, fire fighting appliances, air conditioners, mechanical ventilators, partitions, fittings and fixtures, fixed carpets and geysers.
- 1.1.2. "the architect" - means the architect from time to time nominated and appointed by the LESSOR;
- 1.1.3. "the auditor" – means the auditor from time to time nominated and appointed by the LESSOR.
- 1.1.4. "the Building" – means the building/s on the property in which the premises are situated forming part of the SHOPPING CENTRE as extended and altered from time to time, together with any parking area forming part thereof erected on the property.
- 1.1.5. "the commencement date" - the date set out as the commencement date in Clause E of the Schedule or any later date as may result in terms of Clause 3.3;
- 1.1.6. "Centre Manager" - natural person or a company appointed by the LESSOR to manage the BUILDING on the LESSOR'S behalf as more fully described in the management agreement between the parties;
- 1.1.7. "the Common Areas" – means those portions of the Building and the Property not designed or intended to form part of the gross lettable area of the Building or Property including, but without derogating from the generality of the foregoing, lifts, staircases, escalators, gardens, toilets, loading zones, parking areas, service roads, kitchens, malls, passages, service corridors and yards. Nothing contained in this definition shall be construed as imposing any obligation on the LESSOR to provide any such conveniences as are specifically mentioned above, unless stipulated otherwise in this agreement.

- 1.1.8. "the SHOPPING CENTRE" - means the HIGHVELD MALL SHOPPING CENTRE and all the landscaped areas, parking areas, roadways and common areas on the Property;
- 1.1.9. "the Design Consultant" – means the design consultant from time to time nominated and appointed by the LESSOR;
- 1.1.10. "the House Rules" – means the rules as published by Highveld Mall Centre Management from time to time for the tenants in the SHOPPING CENTRE;
- 1.1.11. "the Lease Period" - means the period set as set out in Clause C of the Schedule;
- 1.1.12. "the Lease" - means this Agreement of Lease and the Annexures attached thereto;
- 1.1.13. "the Prime Rate" – means the publicly quoted prime overdraft rate of interest from time to time published by the "LESSOR'S bankers" as being its prime overdraft rate as certified by any manager of that bank, whose appointment and designation need not be proved;
- 1.1.14. "the PROPERTY"- means the property consisting of the erven upon which the SHOPPING CENTRE is situated and made up as follows:
- 1.1.14.1. Certain Erf 1716 Del Judor Extension 27 in the Emalahleni Municipality of Witbank, Mpumalanga;
- 1.1.14.2. And any other additional erf upon which the SHOPPING CENTRE is situated;
- 1.1.15. "Pro rata share" - means - The ratio which the lettable floor area of the leased premises bears to the total lettable floor area of the property. In order to derive the aforesaid ratio, the lettable floor areas of the leased premises and of the property respectively shall be determined by using the SAPOA Method of Measuring Floor Areas in Commercial Buildings;
- 1.1.16. "Schedule" – means – The Schedule to the Agreement of Lease.
- 1.1.17. "termination date" - the date on which this Lease, which for purposes hereof includes any extensions or renewals hereof, expires or is terminated.
- 1.2. Unless inconsistent with the context, words relating to one gender shall include the other gender, words relating to the singular shall include the plural and vice versa

and words relating to natural persons shall include juristic persons and vice versa. Wherever the LESSOR or LESSEE is referred to it shall include the authorised representatives of the LESSOR or the LESSEE.

- 1.3. Headings are used for reference and convenience only, and do not affect the interpretation of this Lease.

## **2. PREMISES**

- 2.1 The LESSOR hereby lets to the LESSEE, which hires the Premises described in Clause A of the Schedule, with the rentable area as described therein;
- 2.2 The hire or reservation of parking space is to be agreed upon separately between the parties.

## **3. LEASE PERIOD**

- 3.1. The Lease shall be for the period as stated in Clause C of the Schedule.
- 3.2. The LESSEE shall be allowed access to the PREMISES for purposes of attending to shopfitting and related matters with effect from the commencement date but the LESSOR shall have the right to determine the time and manner of such access. The LESSEE shall not inconvenience the contractor or cause any delay to building works.
- 3.3. If for any reason whatsoever the LESSOR shall be unable to make the PREMISES available to the LESSEE on the commencement date the LESSEE shall nevertheless be bound and hereby undertakes to accept occupation upon such later date as the LESSOR may advise the LESSEE in writing that the PREMISES shall be available for such occupation. In the event of such a delay the period of the Lease shall remain and the date of commencement and termination of the Lease shall be extended accordingly. The LESSEE shall not be entitled to claim damages or cancellation of the Lease by reason of the delay in obtaining such occupation and commencement.
- 3.4. If in the LESSOR'S sole opinion the LESSEE is unlikely to complete the signage, shopfronts, decor and any other works so that the PREMISES shall be complete and ready for trading within 14 calendar days calculated from the commencement date, then the LESSOR shall be entitled to execute such works on behalf of the LESSEE as it may deem fit and charge the LESSEE the cost thereof plus 20% together with consultant's fees on a time basis, as shall be certified by the LESSOR'S Architect, which shall be accepted by the LESSEE as being correct and the LESSEE shall thereupon accept the PREMISES as provided by the LESSOR.

#### **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 Clause F 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 termination date, failing such consensus this Agreement will terminate on the expiry date as set out in Clause G of the Schedule;
- 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. PERMITTED USE**

- 5.1. The Premises are let to the LESSEE for the purpose of conducting therein the business specified in Clause O of the Schedule under the trade name indicated on the title page hereof.
- 5.1.1. The LESSOR does not warrant that any other PREMISES in the SHOPPING CENTRE shall not be let for any of the purposes aforesaid to any person, or that any other tenant in the SHOPPING CENTRE shall not compete with any businesses of the LESSEE. The LESSEE acknowledges that it shall not have an exclusive right to any particular type of business or product being sold in the building or on the property;
- 5.1.2. The LESSEE shall not use the PREMISES or any part thereof, or allow the same to be used, for any purpose other than that specified in Clause O of the Schedule to the Agreement of Lease (nor shall the LESSEE increase or decrease such permitted uses), or trade under any trade name other than that specified in the title page without the LESSOR'S prior written consent.
- 5.1.3. The LESSEE shall carry on in the PREMISES a business of high standing and in any event of no lesser standing and standard than those of the other tenants in the SHOPPING CENTRE so as to maintain the class and standing of the SHOPPING CENTRE.
- 5.2. The LESSEE shall not operate in the PREMISES a wholesale or factory out-let or, a co-operative store, a secondhand store, an Army, Navy or Government surplus store.

- 5.3. The LESSEE shall not conduct on the PREMISES any auction, fire, closing down, insolvency or liquidation sales or display any sale notices on the shopfront windows of the PREMISES or anywhere else in the SHOPPING CENTRE.
- 5.4. The LESSEE may not display, sell merchandise, allow carts, tables, trestles, chairs, signs, devices or any other objects to be stored or to remain outside the PREMISES.
- 5.5. The LESSEE shall not conduct any trade or display any of its goods or products or similar items outside the premises without the LESSOR'S prior written consent. The LESSEE hereby consents to the removal by the LESSOR or its agents, at the LESSEE'S expense, of any goods or products traded or used for trading in breach of the provisions of this Clause.
- 5.6. The LESSOR does not warrant that the premises are fit for the purpose for which they are let or for any other purpose whatsoever or that the LESSEE shall be granted a licence or permit in respect of the premises for the conduct of the business of the LESSEE, or that any license or permit granted shall be renewed, and there shall be no obligation on the LESSOR to do any work or make any alterations or repairs to the premises to comply with the requirements of any licensing or other authority. The LESSOR shall not, however, unreasonably withhold its consent to the LESSEE doing such work, repairs or alterations at the LESSEE'S own cost and expense: provided that the LESSOR shall be entitled to require such work or alteration to be effected subject to the approval of the LESSOR'S architect and that the fees thereof be paid by the LESSEE. On completion of such works the LESSEE shall be obliged to provide the LESSOR with all necessary certificates of compliance including but not limited to an Electrical Certificate of Compliance for any works done to the premises.

## **6. RENTAL**

### **6.1. Commencement of Rental**

The monthly rental payable by the LESSEE to the LESSOR shall commence on the commencement date and shall be payable monthly in advance by not later than the first day of each month, free of exchange, without deduction, set-off or demand, at any such address as may be designated from time to time in writing by the LESSOR; provided that should the LESSEE commence trading on any date prior to the commencement date, then a pro rata share of rental based upon the number of days during which the LESSEE shall have traded prior to the commencement date and calculated at the rate set out in Clauses H, I and K of the Schedule shall be payable by not later than the commencement date.

6.2. Notwithstanding the provisions of this Agreement, if the commencement date is not the 1<sup>st</sup> (first) day of a calendar month, a pro-rata amount of rental and other charges shall be payable by the LESSEE;

6.3. 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 municipal and utility charges consumed in the premises, rates and taxes and other imposts in terms of this Agreement.

6.4. Annual Rental

For the purpose of this Lease the words "lease year" means a period of twelve consecutive calendar months. The first lease year shall commence on the date on which this Lease commences if such date is the first day of a calendar month; if not, then the first lease year shall commence on the first day of the month following that in which this Lease commences;

6.5 The annual rental payable for the PREMISES in respect of any lease year shall be the greater of either the monthly rentals as set out in Clause H of the Schedule or the LESSEE'S annual turnover rental as set out in Clause L of the Schedule for that particular lease year, plus an amount equivalent to the value added tax payable at the prescribed rate from time to time by the LESSEE and which value added tax amount shall be paid together with the annual rental.

## **7. ANNUAL TURNOVER RENTAL**

7.1. Definition of "Net Annual Turnover"

For the purposes hereof, the expression "net annual turnover" shall mean in regard to any period, the net selling price whether for cash, on terms of credit, or hire purchase (excluding interest, finance and other like charges and any tax or imposition levied in connection with the sale of goods) of all goods sold and services rendered by the LESSEE and / or any licensee, concessionaire or sub-lessee including all orders taken or received at the PREMISES whether such orders be executed from the PREMISES or elsewhere, and of all goods sold and services rendered from the PREMISES and which have resulted from an order taken or received via the internet site of HIGHVELD MALL SHOPPING CENTRE, the LESSOR, its agents or the internet site of the LESSEE, provided that each sale on installment or credit shall be treated as a sale for the full net selling price in the period during which such sale shall be effected, irrespective of when the LESSEE shall receive payment (whether full or partial) thereof,

minus

- 7.1.1. any refunds given, credits passed or allowance made on goods claimed to be defective or unsatisfactory (provided that the net selling price of any such goods in respect of which the refund, credit or allowance is given or made shall have previously been included in the net annual turnover of the LESSEE);
  - 7.1.2. the net selling price of any goods returned for exchange, provided that the net selling price of the goods exchanged for the returned goods shall have been included in the net annual turnover of the LESSEE;
  - 7.1.3. any amount reasonably written off during the relevant period as bad debts, provided that should any debts which have been written off as bad debts be subsequently recovered by the LESSEE, then the amount or amounts so recovered shall be included in and form part of the net annual turnover of the LESSEE for the relevant period during which the recovery of such bad debts has taken place.
- 7.2. All transactions originating from the PREMISES, or any transactions in respect of goods usually sold or services usually rendered at the PREMISES, or in respect of goods sold and/or services rendered from the PREMISES and which have resulted from an order taken or received via the internet site of HIGHVELD MALL SHOPPING CENTRE, the LESSOR, its agents or the internet site of the LESSEE shall be considered as made and completed from the PREMISES and shall be included and form part of any calculation of the net annual turnover of the LESSEE even though the bookkeeping and payment of any account may be transferred to another place for collection and even though the actual completion of the transaction or service order and actual delivery of the merchandise may be made from a place other than the PREMISES. To ensure that the PREMISES shall produce the maximum volume of turnover, the LESSEE agrees that it shall not directly or indirectly divert elsewhere any business, trade or commerce which would ordinarily be transacted in, at or from the PREMISES.

7.3. Statement of Net Annual Turnover

The LESSEE shall at its own cost furnish or cause to be furnished to the LESSOR an audited statement of the net annual turnover within three (3) months after the close of each financial year of the LESSEE, certified as being correct by the LESSEE'S Auditor reflecting the net annual turnover of the LESSEE for such financial year. Each statement of net annual turnover shall clearly set forth separately all the items comprised in the definition of the net annual turnover of the LESSEE as set out in Clause 7.1 above.

7.4. Payment of Annual Turnover Rental

On the same date as any statement as set out in 7.3 above is or is due to be furnished to the LESSOR, the LESSEE shall simultaneously pay to the LESSOR the amount, if any, by which its payments of the monthly rental set out in Clause 6.5 above during the lease year in question fall short of the annual turnover rental payable for that lease year.

7.5. Obligations of LESSEE and rights of LESSOR in regard to the statement of Net Annual Turnover

7.5.1. The LESSEE shall keep full and accurate books of account, records and other pertinent data of and relating to the calculation of the net annual turnover. Such books and records shall be kept for not less than a period of three (3) years after the close of each financial year. The receipt by the LESSOR of any statement of Net Annual Turnover or any payment of annual turnover rental for any lease year shall not bind it as to the correctness of such statement or payment.

7.5.2. The LESSEE shall record each transaction envisaged in this Clause, whether for cash or credit, in a sealed electronic cash register, or any other registers having a cumulative total

7.5.3. The LESSOR and its agents shall be entitled to inspect the LESSEE'S books of account, records and other pertinent data described in Clause 7.5.1 and 7.5.2 above relating to the calculation of the net annual turnover and shall have the right to take reasonable copies and extracts therefrom. The LESSOR shall be entitled to disclose the LESSEE'S turnover data to any third person should it be necessary for the purpose of raising finance or in the event of the possibility of a sale of the SHOPPING CENTRE or any share in the LESSOR'S capital, or for statistical purposes.

7.6. Audit of Net Turnover

7.6.1. The LESSOR or its auditor shall at any time be entitled to audit the LESSEE'S statement of net annual turnover. The LESSEE shall provide the LESSOR or its auditor with all such information and explanations as may be required. Such audit shall be limited to the statement of net annual turnover and shall be conducted during normal business hours at the PREMISES or any other site as agreed upon by the LESSOR and the LESSEE.

7.6.2. If it shall be determined as a result of such audit that there has been any deficiency in the payment of annual turnover rental, then such deficiency shall become immediately due and payable with interest at the maximum permissible rate of interest from the date upon which the said payment should have been made in terms of Clause 7.4 above. Should there be a discrepancy of 5% (five per centum) or more between the net annual turnover as determined by the LESSOR or its auditor, and the LESSEE'S statement of net annual turnover as submitted, then the LESSEE shall become liable for, and shall on demand pay to the LESSOR, the costs of the audit.

## **8. DEPOSIT**

The LESSEE shall on signing this Lease pay in cash or by way of a bankers guarantee an amount equivalent to three months rental, rates, marketing costs as would be payable in the last month of this lease as stated in Clause R of the Schedule as a deposit in addition to all other amounts due in terms of this agreement to the LESSOR. The LESSOR shall have the right of applying the whole or portion thereof towards payment of the rent, water and electric current charges, key replacements, renovations or any other liability of whatsoever nature for which the LESSEE is responsible. If any portion of the deposit is so applied, the LESSEE shall on written demand from the LESSOR or its agents reinstate the deposit to its original amount. The deposit shall be retained by the LESSOR or his agents until after the vacating of the PREMISES by the LESSEE and the complete discharge of all the LESSEE'S obligations to the LESSOR arising from this Lease, whereafter the full deposit, or the balance of it still remaining shall be paid over to the LESSEE without any interest. The LESSEE shall not be entitled to set off against the deposit any rent or other amount payable by him.

The LESSOR shall be entitled to increase the value of the deposit during the course of the lease such that same is in line with the then rent, operating costs and utility charges payable.

## **9. ELECTRICITY, GAS, WATER AND OTHER CHARGES PAYABLE BY LESSEE**

9.1. The LESSEE shall be liable for and on demand pay inclusive of Value Added Tax any charges arising directly or indirectly out of its use of electric current, gas and water in respect of the PREMISES or in respect of the building and which are attributable to the use of the LESSEE, including external signage and air-conditioning. The LESSEE shall also be liable for and shall on demand pay the basic and service charges in respect of electric current, gas and water consumed as aforesaid at the same tariffs, levies and costs which would have applied to the LESSEE if the supplier had supplied the service directly to the PREMISES. The LESSEE'S liability for charges (which shall include a reading and service charge for sub-meters) for electric current, gas and water shall be in accordance with separate sub-meters which the LESSOR shall be entitled to install at any time, the number and position of such sub-meters to be entirely at the discretion of

the LESSOR, or should no such sub-meters be installed, such charges shall be calculated by the LESSOR on a pro rata basis as set out in 9.4 hereunder. Should the LESSEE fail to pay the charges for electric current, gas and water within seven (7) 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/or gas and/or water to the LESSEE, and shall not be liable for any consequential damages that may be sustained by the LESSEE.

- 9.2. The LESSEE shall pay on demand to the LESSOR or to the local or other responsible authority, as the case may be, a pro rata share as hereinafter set out of the cost of all sanitary fees, refuse removal fees, sewerage or effluent charges levied, and any other charges levied from time to time in respect of the building or the property by the local or any other responsible authority.
- 9.3. If the LESSOR agrees to provide additional electric current to satisfy the LESSEE'S requirements, the LESSEE shall bear all costs of installation and supply and associated fees (including consultancy fees) and charges, including charges for the use thereof.
- 9.4. Where the LESSEE is to pay a pro rata share of the charges, fees or levies referred to in Clauses 9.1, 9.2 or 10, the said pro rata share shall be in terms of Clause L of the Schedule as determined by way of a certificate of such areas issued by the LESSOR'S Architect which shall be binding on the LESSEE.
- 9.5. If there is any dispute as to the amount of the LESSEE'S liability for any of the abovementioned charges, the onus of proof shall be on the LESSEE. If any such fees and charges are paid by the LESSEE direct to the local authority, the LESSEE shall, if called upon to do so, exhibit to the LESSOR the receipts in respect thereof, or if any such fees, rates and charges are paid by the LESSOR, the LESSEE shall make repayment thereof to the LESSOR immediately upon demand at the place where rental is payable in terms of Clause R of the Schedule.
- 9.6. An electricity and water consumption deposit, equal to an amount of 2 (two) months' consumption shall be payable upon demand by 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 8 above.
- 9.7. 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 area the air-conditioning unit serves, excluding common areas.

**10. RATES AND TAXES**

- 10.1. As from the commencement date of this Agreement of Lease, the LESSEE shall pay the amount indicated in Clause J of the Schedule the estimated rates and taxes monthly together with the rent, being his pro rata share of the rates and taxes in respect of the PROPERTY.
- 10.2. The LESSEE shall be liable for its pro-rata share of any new tax or legal levy or other imposts introduced by any National Provincial or local government or any other government body or other authority or authority created in law in respect of and / or relating to the premises, property, building or signage erected thereon.
- 10.3. In the event of the abovementioned rates and taxes, levy or other impost being increased or decreased the LESSEE'S pro rata share shall be increased or decreased accordingly as from the date on which such increase or decrease becomes effective.
- 10.4. The LESSEE shall pay a pro rata share of any cost that the LESSOR may incur in successfully acquiring a decrease in the valuation of the property from the local authority.

**11. COMMON AREAS, JOINT FACILITIES AND ACCESS TO THE BUILDING**

- 11.1. The LESSEE shall have the right of reasonable use having regard to the rights of other lessees , of the common areas, service roads, loading facilities, side walks and yard, foyers, malls, arcades, passages, parking areas, entrances, exits, loading docks, stairways, toilets and other conveniences and facilities provided by the LESSOR on the PROPERTY and in the SHOPPING CENTRE. The LESSEE undertakes that its employees shall use only such spaces, toilets, conveniences and facilities as may be allocated from time to time in respect of the employees and the LESSEE generally. Should any of the above become unusable, for any reason whatsoever, then the LESSEE shall not have any claim for any remission of rental or for any damages nor any right of cancellation of this agreement of lease.
- 11.2. The LESSOR shall have the right from time to time to make or vary house rules and regulations governing the relationship between lessees of the PROPERTY or SHOPPING CENTRE in regard to all joint facilities and common or open areas within the PROPERTY or SHOPPING CENTRE and the LESSEE undertakes to observe the said house rules and regulations from time to time in force as if they were terms and conditions of this agreement of Lease.
- 11.3. The LESSEE shall have access to the PREMISES or the SHOPPING CENTRE, and the use of lifts, escalators and any other common facilities in the SHOPPING CENTRE, during

normal business hours. Should the LESSEE require access to the PREMISES outside normal business hours, the LESSEE shall obtain the LESSOR'S consent and the LESSOR shall be entitled to make its consent conditional upon any terms and conditions which the LESSOR in its sole and absolute discretion may deem necessary for the proper administration of the PREMISES or the SHOPPING CENTRE.

11.4. Should the LESSEE be prevented from having access to the PREMISES as a result of any fire, riot, organised labour strikes, natural peril disaster, or any other reason whatsoever, then the LESSEE shall not have any claim against the LESSOR nor its agents or employees for any remission in rental or for any other damages, nor any right of cancellation of the agreement of lease.

11.5. The LESSOR shall be entitled in its absolute discretion from time to time to alter and change the size or layout and/or to relocate the parking areas and the common areas in the PROPERTY or SHOPPING CENTRE or extensions thereof.

## **12. MARKETING COSTS**

The LESSEE shall contribute towards the Marketing Costs of the Shopping Centre as per Clause K of the Schedule and shall pay to the LESSOR each month as from the commencement date and together with the rental the amount stipulated in Clause K of the Schedule, which amount shall be applied towards the promotion of the HIGHVELD MALL SHOPPING CENTRE as determined by HIGHVELD MALL SHOPPING CENTRE Management, plus an amount equivalent to the value added tax payable at the prescribed rate from time to time by the LESSEE.

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

## **13. MONTHLY STATEMENT OF TURNOVER**

Notwithstanding anything to the contrary in the provisions of this Lease, the LESSEE shall submit to the LESSOR, within 14 (fourteen) days of the end of each calendar month, an unaudited statement of the gross turnover, which statement shall set forth the selling price of all goods sold and services rendered from the PREMISES (excluding V.A.T) for that specific calendar month. The LESSOR shall treat this information as confidential, and shall use it only for the purpose of determining trading trends and not for the calculation of the annual turnover rental. This Clause shall constitute a material term of the lease agreement.

**14. DEFECTS**

The LESSEE shall give the LESSOR written notice within fourteen (14) days after the commencement date of this Lease, of any defects in the PREMISES or any installations of whatsoever nature, or appliances therein, or of any keys, locks, windows, sewerage pans, basins and water taps and fittings and other appurtenances which are defective or missing, failing such notice (or after the remedying of any matters stated in any such notice, as the case may be), the LESSEE shall be deemed to have accepted the PREMISES, installations, appliances and the appurtenances as being complete and without any defect therein and to have hired the PREMISES in the condition in which they are at the commencement of this Lease (or after the remedying of any matters stated in any such notice, as the case may be).

**15. COMPLIANCE WITH LAWS AND TITLE DEEDS**

The LESSEE shall comply with all laws, by-laws and regulations relating to the lessees or occupiers of business premises or the conduct of any business carried on in the PREMISES / PROPERTY. The LESSEE shall not contravene or permit the contravention of any of the Conditions of Title under which the PROPERTY is held by the LESSOR or any of the provisions of the Town Planning Scheme applicable to the PROPERTY and not do or cause or permit to be done in or about the PREMISES anything which may be or cause a nuisance or disturbance to other occupants of the building or occupiers of the neighboring premises / or properties. The LESSEE in complying with all laws, by-laws and regulations shall obtain all necessary certificates and authorizations at its own cost. The LESSOR may at any time during the course of the Lease request the LESSEE to display such certificates and authorisations.

**16. ALTERATIONS AND ADDITIONS**

16.1. The LESSEE shall not make any alterations or additions to the PREMISES without the LESSOR'S prior written consent. If it shall be a condition of any competent authority in respect of a grant or renewal of any licences required by the LESSEE to carry on business for which the PREMISES are hired that the PREMISES shall be altered, added to or renovated, the LESSOR shall not be obliged, but the LESSEE shall be entitled, at its own expense, to carry out such alterations, additions or renovations provided that the LESSOR'S prior written consent is obtained and that the work is carried out by a contractor acceptable to the LESSOR and on conditions stipulated by the LESSOR who shall also have the right to nominate any professional consultants necessary to supervise the work at the LESSEE'S expense. If any alterations or additions are made by the LESSEE, it shall, on the expiry of this Lease or the expiry of any renewal hereof, remove them and reinstate the PREMISES to the condition in which they were before additions and alterations were effected, unless the LESSOR otherwise agrees in writing, in which case any alterations or improvements shall become the LESSOR'S property. The LESSEE shall under no circumstances have any claim for compensation for any such

alterations, additions or renovations whether or not they are removed and the PREMISES reinstated.

16.2. The LESSEE may, with the prior written consent of the LESSOR, at any time install any fixtures, fittings and equipment in the PREMISES for the purpose of carrying on the LESSEE'S business and may at any time and shall prior to the termination of this Lease if so required by the LESSOR, remove any such fixtures or fittings provided that the LESSEE shall repair any damage caused by the installation or removal of such fixtures, fittings or equipment. If the LESSEE does not remove any fixtures and fittings on vacating the PREMISES these shall become the property of the LESSOR and the LESSEE shall not at any time or under any circumstances have any claim whatsoever against the LESSOR for any fixtures and fittings not removed on the termination of this Lease whatever the reason may be. However, the LESSEE shall be liable to reimburse the LESSOR on demand for any and all costs incurred by the LESSOR in having such fixtures and fittings removed and the Premises reinstated on behalf of the LESSEE. Where the LESSEE carries out such reinstatement work after the expiry of the lease, same shall be carried out within a reasonable time, with the proviso that should such work be carried out by either the LESSEE OR LESSOR, the LESSEE shall be liable to the LESSOR for rental and other charges for the period of such reinstatement of the premises.

16.3. All alterations and additions and the installation of fixtures and fittings referred to in 17.1 and 17.2 above, together with the installation of any LESSEE'S signs, graphics or equipment in the PREMISES or the building shall be known as "LESSEE'S work", and shall be done in accordance with the following conditions:

17.3.1 All LESSEE'S work shall be done at the LESSEE'S expense, and shall be executed in accordance with drawings and specifications which the LESSEE is obliged to provide within 21 days of signing of this Agreement of Lease, approved by the LESSOR in writing. The work shall be done by contractors and sub-contractors nominated or approved by the LESSOR, which contractors and sub-contractors shall comply with such reasonable rules and regulations as to safety, administration and co-ordination as the LESSOR may stipulate.

17.3.2 The contractors referred to in 17.3.1 and the suppliers of materials required for the LESSEE'S work shall be the LESSEE'S contractors and suppliers and the sub-contractors referred to in 17.3.1 shall be the said contractor's sub-contractors. All the said contractors and sub-contractors and suppliers shall give a complete waiver of any liens to which they may be entitled.

There shall be no conflict due to or arising from the LESSEE'S work with any contract to which the LESSOR or its contractors and sub-contractors may be

parties. In the event of any such conflict the LESSEE shall remove its contractors and sub-contractors from the PREMISES and the SHOPPING CENTRE to the extent necessary to remove the conflict.

17.3.3. Should the LESSOR elect or agree to cause its contractors and sub-contractors to do the LESSEE'S work on the LESSEE'S behalf and at the LESSEE'S expense, a certificate signed by a duly authorised representative of the LESSOR, reflecting the cost of such work, which cost shall include the fees and disbursements of any professional consultants appointed by the LESSOR to supervise the work, shall be final and binding on the LESSEE and shall be paid by the LESSEE on demand within seven (7) days of presentation of the certificate referred to above.

17.3.4 The LESSEE shall keep and maintain at its own cost all LESSEE'S work in good order and condition and the LESSEE shall be liable to pay to the LESSOR any additional local authority rates and taxes and/or insurance premiums levied or charged as a result of the said LESSEE'S work.

17.3.5 The LESSEE shall not make any alterations to the electrical and air-conditioning installations on the Premises, unless such work is carried out by the LESSOR'S professional consultants and contractors, the cost of which shall be for the LESSEE'S account and payable within 7 (seven) days from date of certification by the LESSOR or its authorised representative.

17.4 The LESSEE shall on cancellation, termination or expiry of this Agreement of Lease at the LESSEE'S costs and expense reinstate the premises in:

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

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

17.4.3 any combination of 17.4.1 and 17.4.2 as directed by the LESSOR in writing.

## **18 SIGNAGE**

The LESSEE may, with the prior written consent of the LESSOR as well as the approval of the LESSOR'S design consultants and architect, be entitled to erect new signage or change any existing signage at the premises which signage shall strictly comply with the requirements of the LESSOR as the LESSOR may from time to time at its sole discretion determine.

## **19 LESSOR'S RIGHT TO ADD TO BUILDING**

The LESSOR shall be entitled at all times during the period of this Lease to complete the buildings on the PROPERTY and to effect any repairs, alterations, improvements and additions to the said buildings and for such purpose to erect building equipment anywhere on the PROPERTY or in the SHOPPING CENTRE (including the PREMISES) and also such devices as may be required by law or which the architect may certify to be reasonably necessary for the protection of any person against injury, arising out of the building operations in such manner as may be reasonably necessary for the purpose of any of the works aforesaid.

The LESSOR shall further be entitled by itself or through its workmen, contractors or agent to all such rights of access to any portion of the PREMISES as may be reasonably necessary for the purpose aforesaid.

In exercising its above rights the LESSOR shall use its best endeavours to cause as little interference as possible with the LESSEE'S occupation of the PREMISES. The LESSEE shall not be entitled to any remission of rental or compensation or damage or cancellation of lease by reason of the exercise by the LESSOR of its rights under this Clause 19.

## **20 MAINTENANCE**

20.1 The LESSOR shall maintain the exterior of the PREMISES (excluding advertising signs, window panels and shop fronts) as well as the main exterior walls and roofs of the SHOPPING CENTRE in good order and repair. The LESSOR shall also arrange the maintenance and servicing of any lifts or escalators serving the SHOPPING CENTRE (but not exclusively the PREMISES) and shall be entitled notwithstanding the provisions of 20.2 below, by itself or through its workmen or agents without notice, to suspend the operation thereof in order to effect the required maintenance of servicing or for any other similar purpose provided that the LESSOR shall exercise its rights in terms hereof with as little inconvenience as possible to the LESSEE. The LESSEE shall not be entitled to any remission of rental, compensation or damage by reason of the exercise by the LESSOR of its rights under the Clause.

20.2 In the event of the PREMISES being air-conditioned by means of an air-conditioning plant controlled by the LESSOR, the LESSOR may from time to time establish and the LESSEE shall conform to rules and regulations relating to the switching on and off of the air-conditioning plant, as the LESSOR shall advise the LESSEE in writing.

20.3 The LESSOR shall provide air-conditioning during trading hours. The times for air-conditioning on the leased Premises to be switched on and off before and after trading hours shall be determined by the LESSOR.

- 20.4 The LESSOR shall take all reasonable steps to ensure that the air-conditioning plant is fully tested before occupation of the leased Premises. The LESSEE acknowledges that the LESSOR, after occupation of the leased Premises, shall require a reasonable period for testing and regulating the air-conditioning system and that air-conditioning may not be of a reasonable standard during this period. The LESSOR shall use its best endeavours to limit this period to a minimum.
- 20.5 The LESSEE shall co-operate with the LESSOR at all times to ensure the most effective functioning of the air-conditioning system.
- 20.6 Under no circumstances shall the LESSEE install or have installed any air-conditioning units on the leased Premises without the prior written approval having been obtained from the LESSOR, nor shall the LESSEE in any way interfere with the air-conditioning system.
- 20.7 The LESSEE shall care for and maintain the PREMISES and any fittings, equipment, air-conditioning, shop fronts (interior and exterior) or appurtenances of whatsoever nature in good order and repair during the period of the Lease and at the termination thereof return and deliver the same to the LESSOR in the same good order and condition as it was at the commencement date or as it was when the PREMISES were first occupied by the LESSEE. The LESSEE shall make good and repair at its own cost any damage or breakages and shall, in the event of its failing to replace, repair or make good any broken, damaged or missing articles or to repair or maintain any items as required in terms of this Agreement of Lease, permit the LESSOR, without prejudice and in addition to the LESSOR'S other rights, to carry out such work without liability on the part of the LESSOR to the LESSEE for any loss or damage that the LESSEE may sustain or suffer as a result thereof. Upon completion of such work and receipt of a demand for the payment of the cost thereof, the LESSEE shall effect payment of the costs incurred within seven (7) days of receipt of such demand together with interest at the maximum rate permissible by law from date of completion of the work to date of payment. Without detracting from the generality of the above, the LESSEE shall repair any damage caused to the doors, windows, shopfronts (interior and exterior), ceiling(s), floor and walls of the PREMISES which may be occasioned by any cause including forcible entry or exit and malicious damage.

## **21 LESSOR'S RIGHT OF ENTRY**

The LESSOR shall be entitled to enter the PREMISES at all reasonable times either through its representatives, employees or workmen or through its agents or contractors for the purpose of inspecting the PREMISES or for carrying out any repairs or other work in respect of the PREMISES or SHOPPING CENTRE if it should desire to do so. The LESSOR shall in exercising its rights as aforesaid not unduly or unreasonably interfere with the conduct of any business

lawfully carried on in the PREMISES and shall carry out any repairs or other work as expeditiously as possible. The LESSEE shall not have any claim for remission of rental, compensation or damages in connection with the exercise by the LESSOR of any of its aforesaid rights.

## **22 GLASS, WINDOW PANELS AND SHOP FRONTS**

The LESSEE shall be responsible for any glass, both internal and external, and mirrors and window panels in or on the PREMISES and shall be obliged at its expense to replace any such glass, mirrors or window panels as may be damaged however and by whomsoever such damages shall be caused. Without prejudice to and without absolving it from its aforesaid obligations, the LESSEE shall, except for any period during which the LESSOR may elect to do so, insure plate glass and window panels against damage and maintain the insurance in force throughout its occupation of the PREMISES. The LESSEE shall on demand by the LESSOR cede the policy of insurance to the LESSOR as security for its obligations hereunder. The LESSEE shall if so required by the LESSOR exhibit to the LESSOR from time to time proof of payment of the premiums that fall due. If it fails to do so in respect of any premiums the LESSOR shall be entitled without prejudice to its rights under this Lease to pay the premium and to recover it from the LESSEE. If the LESSOR elects to insure the plate glass and window panels for any period, the LESSEE shall pay to the LESSOR on demand so much of each premium paid by the LESSOR as is attributable to the insurance of the plate glass and window panels in or on the PREMISES.

## **23 FIRE HAZARDS**

The LESSEE shall not at any time bring or allow to be brought or kept in the PREMISES nor do or omit to do nor suffer to be carried on in the PREMISES any matter or thing or activity whereby a 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 premiums of such insurance are increased as a result of the 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 from time to time in respect of any additional premiums. The LESSEE shall pay such amount immediately on notification from the LESSOR or the Insurance Company to the extent that such additional premiums have been charged.

## **24 FAILURE OF SERVICES**

The LESSOR shall not be liable for the failure of lifts, escalators, hoists, or of the electricity or water supply, or air-conditioning, or by reason of any defect in any equipment of the LESSOR servicing the PREMISES or SHOPPING CENTRE from any cause whatsoever, and the LESSEE shall not have any claim for any damages, nor be entitled to cancel this Lease or to receive any diminution or abatement or remission of rental by reason of the fact that any of the services

have failed or been interrupted, nor shall the LESSOR be responsible for any delays occasioned by the breakdown of any escalators, lifts, hoist or other services mentioned. The LESSOR shall, however, be liable to take reasonable steps to have the disruption of such services repaired and/or remedied as expeditiously as possible after having received the relevant advice or notice of such failure or disruption.

## **25 EXCLUSION OF LESSOR'S LIABILITY FOR DAMAGES**

25.1 The LESSOR shall not be responsible to the LESSEE or its servants, agents, employees, members, clients or invitees:

25.1.1 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, shop front, ceilings and roof sheeting of the premises as a result of any break-in or attempted break-in; and / or

25.1.2 for any accident, injury, loss of life or damage caused to them from whatsoever cause arising, including any failure in the premises, building, property and common area (or any part or portion thereof), through or while upon or while using the staircases, passages or any other portion of these premises, building, property or common area, howsoever 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, property and common area; provided that the liability of the LESSOR shall not be excluded in the event of such a claim arising from grossly negligent or willful conduct and / or

25.1.3 for any damage which may be done to any of the assets of the LESSEE including stock-in-trade, fixtures, fittings, books, papers and otherwise, which may be in the premises, or to the LESSEE, 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

25.1.4 for any damage or inconvenience which the LESSEE may suffer owing to any difficulties from time to time in the supply of electric 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 damage or defective condition is not caused by the LESSOR'S grossly negligent or willful misconduct;

25.2 Should the building 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 there from 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 nor any claims for the cancellation of the Lease by reason of any such inconvenience during the period of completion.

25.3 No action by the LESSOR, including in particular the provision of any security service to the SHOPPING CENTRE or property, shall be construed in any way whatsoever as an acceptance by the LESSOR of any responsibility whatsoever towards the LESSEE or any other person.

## **26 EXCLUSION OF CLAIMS AND RIGHT TO WITHHOLD RENTAL**

The LESSEE shall not under any circumstances be entitled to cancel this Lease 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 rental by reason of the PREMISES or any appliances, air-conditioning or other installation, fittings, fixtures and appurtenances in the said PREMISES or the building being in a defective condition or falling into disrepair or any particular repairs not being effected by the LESSOR or for any other reason whatsoever. The LESSEE shall not have any right of cancellation or claim for damages, abatement, of rental or otherwise, against the LESSOR by reason of the escalators or lifts, air-conditioning installation or other amenities in or on the PREMISES, SHOPPING CENTRE or PROPERTY being out of use or out of order for any reason whatsoever or for any period whatsoever. The LESSOR shall not be responsible for any damage or inconvenience which the LESSEE may suffer owing to any difficulties which may lead to interruption or disruption from time to time in the supply of electric current, water, gas, air-conditioning installation or other amenities or the complete cessation of such amenities nor

shall the LESSEE be entitled to cancel this Lease or to an abatement of rental in respect of any such occurrence.

## **27 SERVICES**

The nature of the services to be provided in the PREMISES by the employees or agents of the LESSOR shall be at the sole discretion of the LESSOR. Neither the LESSOR nor its agents or employees shall be liable for the receipt or non-receipt of 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, visitor or invitee of the LESSEE may have deposited or left in the PREMISES or in any part of the SHOPPING CENTRE or PROPERTY. All goods brought by the LESSEE onto the PREMISES shall be placed there at its sole risk and no responsibility whatsoever therefor is undertaken by the LESSOR or its agents or employees. The LESSEE acknowledges that neither the LESSOR nor its agents or employees shall in any way be responsible for any loss, theft or damage of any kind to any of the LESSEE'S property whilst contained in the PREMISES.

## **28 PARKING**

28.1 In the SHOPPING CENTRE and PROPERTY of which the PREMISES form part, any parking space or spaces are accepted on the express condition that the allocation of all parking area/s and the hours relevant to such parking shall be in the absolute discretion of the LESSOR.

28.2 The LESSOR does not undertake that the local authority or itself shall not levy a charge for such parking.

28.3 The LESSOR shall at times have the right to control the parking areas of the building or SHOPPING CENTRE and to change the allocation and arrangements or driveways, to restrict parking by tenants, their officers, agents and employees, to close temporarily all or any portion of the parking areas, to discourage and restrict non-customer parking and generally control and do such acts in regard to the said areas as in the judgement of the LESSOR shall be advisable and/or beneficial to the tenants of the SHOPPING CENTRE as a whole and for the improvement, convenience and use thereof by tenants and customers provided that the decisions as to the proper use and control of the parking areas shall be in the sole discretion of the LESSOR, who shall in addition, be entitled to make and enforce rules and regulations in regard to the proper operation, maintenance and control of such parking areas and driveways including the ability to levy a fee for such customer parking areas. The LESSEE further undertakes not to cause or permit vehicles belonging to, or used by it or its Directors, principals, employees, contractors, suppliers or servants, to be parked in the customers' parking areas or driveways, and no obstruction shall be

placed, or be permitted to be placed by it or its Directors, principals, employees, contractors, suppliers or servants in the said driveways which may in any way interfere with their use.

## **29 LOADING ZONES**

- 29.1 All loading, delivery and unloading of goods, merchandise, supplies and fixtures to and from the PREMISES shall be done only at such times, in the areas and through the entrances designated for these purposes by the LESSOR from time to time and shall be subject to such rules and regulations as in the discretion of the LESSOR are necessary for the proper administration of the PREMISES or the SHOPPING CENTRE.
- 29.2 The LESSEE shall ensure that vehicles driven or used by it or its principals, servants, directors, licencees, contractors, suppliers or invitees shall not obstruct the free flow of traffic, the entrances or exits of the driveway(s) or the pedestrian entrances to the PROPERTY, the SHOPPING CENTRE or any premises therein. The LESSEE, its employees, contractors, suppliers or servants shall not use the customers parking area.

## **30 LESSEE'S GENERAL OBLIGATIONS**

The LESSEE shall:

- 30.1 clean the interior and exterior of its shopfront to the full height thereof, the interior of the PREMISES and the advertising signs inside and outside the PREMISES and the SHOPPING CENTRE, and keep the PREMISES and all its contents in a clean, orderly and sanitary condition;
- 30.2 ensure that the PREMISES are both adequately stocked with merchandise and properly staffed with personnel, not obscure the shop windows in any way, keep the shop windows well lit until 23h00 daily and ensure that its window displays are in keeping with the good appearance of the rest of the shops in the SHOPPING CENTRE and the SHOPPING CENTRE itself;
- 30.3 ensure the window and shop displays are bright, clean and aesthetically pleasing and are properly decorated during promotional activities as elaborated in the house rules;
- 30.4 maintain a high degree of lighting so as to ensure the premises are inviting to customers and;
- 30.5 keep the PREMISES open continuously for business during the business hours determined for the SHOPPING CENTRE by Centre Management from time to time during the whole period of this Agreement of Lease or any renewal thereof subject to the

LESSEE'S right to apply to the Centre Manager to close the premises when special occasions or general conditions render it reasonably appropriate to do so. Failure on the part of the LESSEE to keep the PREMISES open, save with the necessary consent, during normal business hours applicable in the SHOPPING CENTRE shall constitute a material breach of this Agreement of Lease and shall entitle the LESSOR to summarily cancel this Agreement of Lease without being obliged to give notice to the LESSEE in terms of Clause 36.1.2 of this Agreement of Lease. The LESSOR undertakes to give the LESSEE one (1) months written notice of any change in the normal business hours applicable in the SHOPPING CENTRE. During certain holiday periods at the sole discretion and option of the LESSOR extended business hours may apply.

- 30.6 insure and keep insured all its fixtures, fittings and installations and all goods in the PREMISES, and maintain adequate public liability insurance provided that the LESSOR shall be entitled at any time to determine and specify what shall be regarded as adequate under the circumstances and the LESSEE shall upon demand by the LESSOR provide adequate proof of such insurances;
- 30.7 pay for the replacement of all fluorescent lamps, starters, ballasts and incandescent lamps used in the PREMISES and shall not interfere with the electrical installation in the PREMISES or any air-conditioning installation or equipment belonging to the LESSOR, and not affix any electrical fittings other than those approved by the LESSOR;
- 30.8 shall be responsible for maintenance and repair of electrical installations in the premises, including but not limited to the distribution board;
- 30.9 not attach to the walls or ceiling or place on the floor of the PREMISES any fittings, appurtenances or equipment which shall or might in the LESSOR'S sole discretion constitute too heavy a load therefor;
- 30.10 not do or permit anything to be done that may be calculated to damage the walls or ceilings or any other portion of the PREMISES and/or the SHOPPING CENTRE;
- 30.11 not install any floor covering, interior or exterior lighting, plumbing, fixtures or shades or make any changes to the shopfront without the LESSOR'S prior written consent;
- 30.12 not install any window covering, awning, blinds, air-conditioner or any like device on or adjacent to the shopfront or any window of the PREMISES without the prior written consent of the LESSOR;
- 30.13 prevent any blockage of any sewer or water pipes or drains in or used in connection with the PREMISES and shall at its own cost remove any blockage or obstruction in any

sewer or water pipes or drains serving the PREMISES exclusively, and where necessary repair the sewer, pipe or drain concerned;

- 30.14 not solicit or canvass for business in the parking area or other common areas in the SHOPPING CENTRE and shall not distribute any pamphlets, handbills or other advertising matter in motor cars parked in the parking area of the PROPERTY or in any other common area of the SHOPPING CENTRE without the prior written consent of the LESSOR;
- 30.15 not leave or permit to be left any goods, refuse, trolleys or articles upon or in the service areas, landings, stairways or passages or in any part of the SHOPPING CENTRE or PROPERTY other than specific areas allocated for the express purpose concerned in which areas no unreasonable accumulation of any articles or matters shall be made or permitted to be made by the LESSEE;
- 30.16 not erect any aerial, dishes / or any other communication device or other similar device on the roof or exterior walls of the PREMISES or SHOPPING CENTRE without in each instance obtaining the LESSOR'S prior written consent. Any aerial so installed without such written consent may be removed by the LESSOR without notice at any time. The LESSEE shall be obliged to utilize a central aerial, antennae or dish where so installed by the Landlord and shall be obliged to contribute towards its maintenance on a pro-rata basis;
- 30.17 not use any tape recorders, televisions, record players, radios, loudspeakers or other similar devices in a manner so as to be heard or seen outside the PREMISES;
- 30.18 not install, erect or place any machine, apparatus or other advertising media outside the PREMISES without the LESSOR'S prior written consent; if the LESSEE commits a breach of this provision the LESSOR shall be entitled without notice or order of court to remove and dispose of the offending matter;
- 30.19 shall at all times ensure that the PREMISES are free from infestation by vermin and should it be discovered that the PREMISES are infected with vermin, the LESSEE shall be responsible for the payment of the cost of the fumigation or other treatment necessary to eradicate such vermin. On the LESSEE giving up occupation of the PREMISES, the LESSEE shall be obliged to ensure that the PREMISES are free from infestation by vermin and should it be determined that the PREMISES are infected with vermin the LESSEE shall likewise be responsible for the cost of treatment for the extermination and eradication of the vermin and such costs shall be a charge against the LESSEE'S deposit (if any). A certificate issued by a recognised registered fumigator or vermin exterminator as to the presence of vermin shall be conclusive and binding on the parties.

- 30.20 The LESSEE shall not do anything which in the sole opinion of the LESSOR, may detract from the appearance of the PREMISES or of the SHOPPING CENTRE.
- 30.21 The LESSEE shall ensure that the common areas and facilities are not used as eating-places or general resting places by its employees and shall take all reasonable steps to ensure that the common areas and facilities are not misused by its invitees in any way.
- 30.22 The LESSEE shall not do or cause anything to be done that may cause a nuisance or inconvenience to the LESSOR or to any other lessees or occupants of the adjoining premises.
- 30.23 At its own expense, repair any damage caused to the premises by forcible entry or otherwise;
- 30.24 Not permit the accumulation of refuse in or outside the PREMISES;
- 30.25 The LESSEE shall ensure that all activities and installations 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 thereunder;
- 30.26 The LESSEE shall not contravene or allow the contravention of the Tobacco Products control Act 83 of 1993, (including the 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;

### **31 RIGHT OF INSPECTION AND EXHIBITION OF NOTICES**

The LESSOR shall be entitled to affix to and exhibit in the SHOPPING CENTRE or on the windows and doors of the PREMISES "TO LET" notices during the period of three months immediately prior to the termination of this Agreement of Lease and a "FOR SALE" notice on the SHOPPING CENTRE or PROPERTY at any time during the period of the Agreement of Lease. The LESSEE shall permit prospective lessees and/or purchasers of the PROPERTY or the share capital of the LESSOR to view the interior of the PREMISES at all reasonable times and the LESSOR and/or any incoming lessee shall be allowed to exhibit on the windows and doors of the PREMISES any notices that may be required in connection with an application for any licence to carry on business in the PREMISES.

## **32 ADVERTISING SIGNS**

- 32.1 The LESSEE shall not place any advertising signs or other matter on the windows, doors, shopfronts or outside the PREMISES without the LESSOR'S prior written consent, which may be given subject to such conditions as the LESSOR in its sole discretion may deem necessary. If the LESSEE commits a breach of this provision the LESSOR shall be entitled without notice or order of court to remove the offending matter at the LESSEE'S expense.
- 32.2 If approved by the LESSOR, the LESSEE'S right to place a sign on a portion of the PREMISES and/or the SHOPPING CENTRE and/or the PROPERTY, shall be by virtue of a licence and such licence may be revoked at any time.
- 32.3 The LESSEE shall during the period of the Agreement of Lease or any renewal thereof maintain the good appearance of any advertising sign, keep it in proper working order and shall, at the expiration or earlier termination of this Agreement of Lease, remove any sign so placed and reinstate the relevant part of the PREMISES and/or SHOPPING CENTRE and/or PROPERTY to the same good order and condition as it was at the commencement date or as it was when the PREMISES were first occupied by the LESSEE.

## **33 DAMAGE TO OR DESTRUCTION OF PREMISES OR BUILDING**

- 33.1 The LESSOR may cancel this Agreement of Lease if:
- 33.1.1 the PREMISES are destroyed or are damaged to such an extent as to be substantially untenable; or
- 33.1.2 there is damage to the SHOPPING CENTRE such that although 33.1.1 does not apply the PREMISES have been rendered substantially untenable because of prolonged absence of access or supply of any necessary service or amenity; or
- 33.1.3 there is destruction or damage to the SHOPPING CENTRE or parts thereof, whether or not the PREMISES are involved and the LESSOR determines to put an end to the tenancies in the SHOPPING CENTRE.
- 33.2 The cancellation under 33.1 shall be by written notice given by the LESSOR within the sixty (60) days (or such shorter period as may be imposed by any competent authority) of the taking place of the event referred to in 33.1 giving rise to the cancellation, provided that in the case of notice given in terms of 33.1.1 or 33.1.2 such notice shall be deemed to be effective as from the date on which the damage or destruction, as the case may be, took place, and in the case of notice given in terms of 33.1.3 such notice

shall be deemed to be effective on the expiration of a period of thirty (30) days of the giving of such notice.

33.3 If:

33.3.1 there is damage to the PREMISES or to the SHOPPING CENTRE so as to diminish the enjoyment of the PREMISES, but not to such extent as to entitle the LESSOR to cancel under 33.1; or

33.3.2 the LESSOR does not exercise its right to cancel under 33.1 when entitled to do so, then the LESSEE shall be entitled to a remission of rental for the period during which and to the extent to which it is deprived of 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.

**34 RE-BUILDING**

34.1 The LESSOR may terminate this Lease or any renewal thereof by giving the LESSEE not less than six (6) calendar months written notice to such effect in all or any of the following circumstances:

34.1.1 should the LESSOR or its successors in title wish to demolish the SHOPPING CENTRE or the PREMISES; or

34.1.2 should the LESSOR or its successors in title wish to reconstruct and/or redevelop and/or renovate and/or make additions to the SHOPPING CENTRE or the PREMISES, provided always that such reconstruction and/or redevelopment and/or renovation be of a substantial and/or major nature.

34.2 The LESSOR shall, however, have the right at any time to commence the reconstruction and/or redevelopment and/or renovation of the SHOPPING CENTRE, other than the PREMISES, and these operations may proceed while the LESSEE is in occupation of the PREMISES, provided, however, that the LESSOR shall make provision for reasonable access to the PREMISES whilst the aforesaid operations are in progress.

34.3 Notwithstanding the implementation of any work as contemplated in 34.2 above, the LESSEE shall have no right to object to such work or to claim any rebate of rental during the period in which the said work may be in progress nor shall the LESSEE have any claim for damages of whatsoever nature by reason of the earlier termination of the Lease as provided for in 34.1 above.

## 35 RELOCATION

35.1 The LESSOR shall be entitled to relocate the LESSEE to other premises in the SHOPPING CENTRE in terms of the provisions of this Clause 35. The LESSOR shall only be entitled to act in terms of this Clause 35 in the instance where the relocation to other premises in the SHOPPING CENTRE is due to or arises from rebuilding, renovation, re-structuring, alteration, extension or to other material changes to the SHOPPING CENTRE.

35.2 If the LESSOR elects to relocate the LESSEE to other premises ("the new premises") the LESSOR shall –

35.2.1 Give written notice to the LESSEE of its intention to relocate the LESSEE to the new premises.

35.2.2 In the written notice give the following information to the LESSEE

35.2.2.1 The location of the proposed new premises;

35.2.2.2 The size of the proposed new premises;

35.2.2.3 The proposed rental payable by the LESSEE to the LESSOR in respect of the new premises;

35.2.2.4 The condition of the proposed new premises;

35.2.2.5 The expected suitability of the new premises in relation to pedestrian traffic, exposure to the public and accessibility by the public;

35.2.2.6 The month, in which the relocation shall take effect, which month shall not be earlier than three (3) calendar months after the date of this notice.

35.3 If the LESSEE does not object to the relocation in accordance with the provisions of Clause 35.4 below then the LESSEE shall irrefutably be deemed to have consented to the relocation of the LESSEE to the new premises

35.4 If the LESSEE objects to the relocation envisaged in the notice contemplated in Clause 35.2 above, the LESSEE shall deliver a written notice of objection to the LESSOR within ten (10) days after receipt of the notice contemplated in Clause 35.2 above. In this notice of objection the LESSEE shall indicate the grounds for its objection with reference to –

35.4.1 The necessity for the relocation;

35.4.2 The location of the proposed new premises

35.4.3 The size of the proposed new premises

35.4.4 The proposed rental

35.4.5 The condition of the proposed new premises

35.4.6 The expected suitability of the new premises in relation to the pedestrian traffic, exposure to the public and accessibility by the public.

35.5 After receipt of the LESSEE'S objection, the parties shall meet whenever it is convenient for both parties, but in any event no later than fifteen (15) days after receipt of the notice of objection by the LESSOR, in order to resolve the dispute. If the parties are unable to resolve the dispute, either party shall be entitled to refer the dispute to an independent architect appointed by the then President of the Institute of Architects (or his successor-in-title). In respect of the independent architect the parties agree that –

35.5.1 The architect shall decide the dispute as expeditiously as is reasonably possible;

35.5.2 In deciding the dispute, the architect shall consider whether the criteria set out in Clause 35.1 above is applicable, and if it is he shall not refuse the relocation of the LESSEE;

35.5.3 Both parties shall have the opportunity to make submissions to the architect;

35.5.4 The architect shall act as an expert and not as an arbitrator;

35.5.5 The architect shall be entitled, acting in his sole and absolute discretion, to determine the procedure in terms whereof the dispute shall be resolved;

35.5.6 The architect shall be entitled to make an order as to his costs;

35.5.7 The decision of the architect shall be final and binding on both parties.

35.6 If

35.6.1 The LESSEE does not object to the notice contemplated in Clause 35.2 above;  
or

35.6.2 The parties resolve the dispute as contemplated in Clause 35.5 above; or

35.6.3 The architect makes a decision as contemplated in Clause 35.5.7 above;

The LESSOR shall not be liable for any costs whatsoever incurred by the LESSEE in relocating to the new premises.

- 35.7 The LESSEE hereby waives any claim whatsoever that it may have against the LESSOR arising from the relocation of the LESSEE to the new premises.

## **36 BREACH BY LESSEE**

36.1 Should the LESSEE –

36.1.1 fail to pay any amount due by the LESSEE in terms of this Agreement on the due date thereof, and / or

36.1.2 commit a breach of any of the terms of this Agreement 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

36.1.3 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;

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

36.1.5 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

36.1.6 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 property pursued); and / or

36.1.7 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

36.1.8 be a franchisee and it's franchise agreement is cancelled or terminates or is interdicted on a temporary or permanent basis from trading as a franchisee in any respect; and / or

36.1.9 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 or the LESSOR'S election in terms of Clause 17.4, 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 -

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

36.1.11 vary the terms of this Agreement by making it thereafter terminable by one month's written notice given by the LESSOR.

36.2 Should any amount of rental not be paid in terms of Clause 36.1.1, the LESSOR shall be entitled, without prejudice to any of its rights in terms of the Agreement or in law, to display a notice that goods in the premises are judicially attached in perfection of the LESSEE'S hypothec;

36.3 If the LESSEE is or has breached any material terms of this Agreement, the LESSEE will not have an option to renew the Agreement as recorded in Clause F of the Schedule;

36.4 Should the LESSEE, at any time during the currency of this Agreement, commit a breach of Clause 36.1.1, 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 be refused and not regarded as valid in terms of this Agreement;

36.5 If for any reason or on any ground the LESSEE occupies the premises and the LESSOR disputes its rights to do so, which shall include the LESSEE'S failure to reinstate the premises as directed by the LESSOR, 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 rent and any other amounts due in terms of this Agreement (as escalated, if applicable), monthly in advance on the first 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 LESSORS'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 12% (twelve percent) from the date of such unlawful occupation. 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;

- 36.6 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 Clauses H, I and L 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.

### **37 LEGAL COSTS AND OUTSTANDING PAYMENTS**

- 37.1 Should the LESSOR institute action against the LESSEE pursuant to a breach by the LESSEE of this Lease, then without prejudice to any other rights which the LESSOR may have, the LESSOR shall be entitled to recover all legal costs incurred by it, including Attorney/Client charges, tracing fees and such collection commission as the LESSOR is obliged to pay to its attorneys, from the LESSEE.
- 37.2 Without prejudice to any of the other rights or remedies of the LESSOR, the LESSEE shall pay from due date to date of payment interest at the LESSOR'S discretion a rate not exceeding 2% above the current prime bank rate charged by LESSOR'S bankers from time to time during the period while the payment is outstanding on all amounts (rental or otherwise) due by it to the LESSOR in terms of or arising out of this Agreement of Lease, including any monies disbursed by the LESSOR on behalf of the LESSEE.

### **38 PAYMENT OF RENTAL IF CANCELLATION DISPUTED**

If the LESSOR cancels the Agreement of Lease and the LESSEE disputes the right to cancel and remains in occupation of the PREMISES the LESSEE shall, pending settlement of any dispute

either by negotiation or litigation, continue to pay (without prejudice to its rights) an amount equivalent to the sum of the rental and any other amounts payable as provided for in this Agreement of Lease, monthly in advance on the first day of each month, and the LESSOR shall be entitled to accept and recover such payments. Such payments and the acceptance hereof shall be without prejudice to, and shall not in any way whatsoever affect the LESSOR'S claim of cancellation 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 cancellation of this Agreement of Lease or the unlawful holding-over of the PREMISES by the LESSEE.

### **39 APPROPRIATION OF PAYMENTS**

The LESSOR shall be entitled in its sole and absolute discretion to appropriate any amounts received from the LESSEE towards the payment of any cause of debt or amount owing by the LESSEE to the LESSOR whatsoever.

### **40 LESSEE AS A COMPANY/CLOSE CORPORATION**

#### **40.1 Company Or Close Corporation To Be Formed**

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

40.1.1 The trustee/s in his/her/their personal capacity/ies hereby jointly and severally warrant/s to the LESSOR that the company about to be incorporated shall, within thirty (30) days from the date of this Agreement:

40.1.1.1 be duly formed and incorporated;

40.1.1.2 duly adopt, ratify and confirm to render this Agreement binding on it; and

40.1.1.3 deliver up its Memorandum and Articles of Association in the case of a company or founding statement in the case of a close corporation together with a true copy of the resolution referred to in 40.1.1.2 duly certified by the Chairman or Secretary of the meeting.

40.1.2 The trustee/s in his/her/their personal capacity/ies hereby jointly and severally bind themselves to the LESSOR that, failing compliance with the provisions of 40.1.1 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 Agreement of Lease.

40.1.3 In the event of proper compliance with the provisions of 40.1.1 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 40.1.1 hereof, then the Deed of Suretyship shall be regarded pro non scripto.

#### 40.2 Transfer of Shares or Member's Interest in the Lessee Company/Close Corporation

40.2.1 If the LESSEE is a company whose shares are not listed on a recognised Stock Exchange, no shares therein shall be transferred from its shareholders, nor may any shares be beneficially allotted to any persons other than such shareholders, without the LESSOR'S prior written consent which, in the case of an allotment or transfer of shares, shall still leave control of the LESSEE with the beneficial shareholders as at the commencement of the Agreement of Lease or of a transfer of shares to a deceased shareholder's heirs, shall not be unreasonably withheld. Any transfer or allotment of shares effected without such consent, which consent shall not be unreasonably withheld, shall constitute a breach of the terms of this Agreement of Lease by the LESSEE. For the purpose hereof, a change of ownership of shares even if not accompanied by a transfer of such shares shall be deemed to be a transfer of shares.

40.2.2 If the LESSEE is a close corporation no member's interest therein shall be transferred from its members to any other persons other than such members without the LESSOR'S prior written consent which, in the case of a transfer of interest shall still leave control of the LESSEE with the beneficial members as at the commencement of the Agreement of Lease or of a transfer of interest to a deceased member's heirs, shall not be unreasonably withheld. Any transfer of member's interest effected without such consent shall constitute a breach of this Agreement of Lease by the LESSEE. For the purposes hereof a change of ownership of member's interest even if not accompanied by a transfer of such member's interest shall be a deemed to be a transfer of member's interest.

## 41 LIABILITY OF PARTNERS

If the LESSEE is a partnership then by their signature hereof, 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 Agreement of Lease. Similarly joint LESSEES shall be jointly and severally liable for all their obligations as LESSEES under or arising to of this Agreement of Lease.

**42 ASSIGNMENT AND SUB-LETTING**

42.1 The LESSEE shall not be entitled to cede, assign or pledge this Agreement of Lease or any of its rights or obligations hereunder.

42.2 The LESSEE shall not be entitled to sublet the whole or any part of the PREMISES; save as follows:

42.2.1 If the LESSEE wishes to sublet, it shall apply to the LESSOR in writing for its consent to the subletting of the PREMISES or part thereof;

42.2.2 The LESSOR, at its sole and absolute discretion may either:

42.2.2.1 refuse consent;

42.2.2.2 consent to the sublease on such terms and conditions which it may determine in which case the LESSEE may on receipt of such 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 Clause 42.2.1;

42.2.2.3 cancel this Agreement of Lease; and

42.2.2.4 may give the LESSEE written notice of its intention to enter into a direct 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 Agreement of Lease between the LESSOR and the LESSEE shall be cancelled and be of no further force and effect to the extent that it relates to the portion of the PREMISES so effected. This cancellation shall, however, in no way detract from the LESSOR'S rights to recover from the LESSEE any amounts which have arisen in terms of this Agreement of Lease and which are still outstanding at the date of such cancellation.

**43 REASONABLENESS OF WITHHOLDING CONSENT**

If there is a 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 of Lease 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.

**44 JURISDICTION OF MAGISTRATES COURTS**

At the option of the LESSOR any action or application arising out of this Agreement of Lease, or any cancellation thereof or any suretyship furnished for the obligations of the LESSEE

hereunder, may be brought in the Magistrate's Court having jurisdiction in respect of the LESSEE or the sureties, as the case may be, notwithstanding that the amount in issue may exceed the jurisdiction of such Court.

#### **45 NOTICES**

- 45.1 All notices which are given by the LESSOR to the LESSEE may be given to it at the address set out in Clause Q of the Schedule, at which address the LESSEE chooses domicilium citandi et executandi for all purposes hereunder, or at such other address of which the LESSEE may advise the LESSOR by written notice duly received by the LESSOR.
- 45.2 All notices which are given by the LESSEE to the LESSOR shall be given to it at the address set out in Clause Q of the Schedule, at which address the LESSOR chooses domicilium citandi et executandi for all purposes hereunder, or at such other address at which the LESSOR may advise the LESSEE by written notice from time to time.
- 45.3 All notices sent by either party to the other shall be delivered by hand or by telefax, electronic mail, or sent by prepaid registered post.
- 45.4 All notices delivered, transmitted or sent as aforesaid to the respective addresses provided for in Clause 45 shall be deemed to have been received by the addressee on the date of delivery in the case of hand delivery or transmission, or on the fifth business day after posting as the case may be, unless the contrary could be proved.
- 45.5 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from the other including by way of telefax or electronic mail transmission shall be adequate written notice of communication to such party.

#### **46 LEASE ONLY BINDING ON SIGNATURE OF LESSOR**

It is further a special condition that this Agreement of Lease shall only have effect and become binding upon the LESSOR if and when the same shall have been executed by it, failing which the LESSEE shall not have the right to claim the existence of a lease from the LESSOR, whether verbal or otherwise, or by reason of this Agreement of Lease having been executed by the LESSEE only: provided, however, that in the event of the LESSEE taking occupation of the PREMISES, notwithstanding the fact that the LESSOR and/or LESSEE have not executed this Agreement of Lease then the LESSOR shall in its sole discretion be entitled to hold the LESSEE to the terms and conditions of this Agreement of Lease or to terminate any tacit lease as may be deemed to have been entered into between the parties hereto, on giving to the LESSEE thirty (30) days notice of termination of the Agreement of Lease and at the expiry of such

period the LESSEE shall vacate the PREMISES and redeliver it to the LESSOR without detracting from any other legal remedies which the LESSOR may have against the LESSEE for damages or otherwise.

#### **47 ADMINISTRATION CHARGES AND STAMP DUTY**

The LESSEE shall be liable for the payment to the LESSOR on demand by it the costs of drawing up this Agreement of Lease as set out in Clause T of the Schedule. The LESSEE shall pay on demand, the stamp duty payable on this Agreement and any stamp duty that becomes payable for any reason or for any renewal or extension of this Agreement. The LESSEE hereby cedes any claim for refund of stamp duty to the LESSOR in the event of any amounts outstanding to the LESSOR at date of such refund.

#### **48 AGENT'S COMMISSION**

The LESSEE warrants that he has had no negotiations with any leasing agent with regard to this Lease. The LESSEE indemnifies the LESSOR against any claim for commission which, as a result of the LESSEE'S action, may be brought against the LESSOR by any leasing agent in connection with this Lease or negotiations about it.

#### **49 EXCLUSION OF ESTOPPEL AND NON-RELAXATION AND NON-INDULGENCE**

49.1 No relaxation or indulgence which the LESSOR may show to the LESSEE shall in any way prejudice its rights hereunder and in particular no acceptance by the LESSOR of rent after due date (whether on one or more occasions) shall preclude or stop it from exercising any rights enjoyed by it hereunder by any reason of any subsequent payment not being made strictly on due date.

49.2 Any warranties or representation, whether express or implied not stated herein, shall not be enforceable against the LESSOR.

49.3 Unless otherwise stated by the LESSOR, in writing, the receipt by the LESSOR or its agents of any rent or other payments shall in no way whatsoever prejudice or operate as a waiver, rescission or abandonment of any cancellation or right of cancellation effected or acquired prior to such receipt.

49.4 It is specifically agreed that the payment of rental by way of cheque is an indulgence to the LESSEE, and in the event of such cheque being dishonoured for any reason whatsoever, the LESSEE shall thereafter be obliged to likewise effect all further payments of any amounts due in terms hereof in cash, and the LESSOR shall be entitled, in addition, to recover from the LESSEE, over and above the costs and other

charges due in terms hereof, the administration costs involved in redepositing or clearing such cheques.

**50 SEVERABILITY**

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.

**51 VALUE ADDED TAX ("VAT")**

All payments to be made in terms of this agreement excludes value added tax payable in terms of the Value Added Tax Act, No. 89 of 1991, as amended and any other rates, taxes or imposts which may be payable thereon. If any rates, taxes imposts or value added tax in terms of the Value Added Tax Act, No. 89 of 1991, as amended, or any other national provincial or local legislation, practice or directive be imposed on any payments to be made in terms of this agreement, such payment shall increase ipso facto with an amount equal to the value added tax or any other rates, taxes or imposts payable in respect thereof.

**52 WHOLE AGREEMENT**

This Lease constitutes the whole agreement between the parties and no warranties or representations whether express or implied not stated herein shall be binding on the parties. No agreement at variance with the terms and conditions of this Lease, unless in writing, shall be binding on the parties.

**53 SURETYSHIPS**

This Agreement of Lease shall be of no force or effect until the LESSEE has procured and obtained the signatures of its directors and/or shareholders, should this be required by the LESSOR, to a Deed of Suretyship in accordance with the standard form adopted by the LESSOR.

**54 SALE OF BUILDING/PROPERTY**

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

**55 TRANSFER OF OWNERSHIP**

The LESSEE acknowledges the right of the LESSOR to sell or otherwise dispose of the SHOPPING CENTRE or PROPERTY forming the subject matter of this agreement. The LESSEE hereby waives any rights which it may have to cancel this lease in the event that the property is so disposed of by the LESSOR and undertakes to remain in occupation and fulfil its obligations in terms of this agreement. The LESSEE furthermore agrees to the assignment by the LESSOR of its rights and obligations in terms of this agreement of the party acquiring the property.

**56 DEBIT ORDER**

The LESSEE shall pay all rentals and other charges on due date by debit order into the account as directed from time to time by the LESSOR. The LESSEE shall do all things necessary to effect such debit order in favour of the LESSOR.

THUS DONE AND SIGNED BY THE LESSOR AT ..... ON THE  
..... DAY OF ..... 20..

AS WITNESSES:

- 1. .... For and on behalf of: -  
the LESSOR
  
- 2. ....  
.....  
.....  
who warrants his authority to execute this  
Lease on behalf of the LESSOR

THUS DONE AND SIGNED BY THE LESSOR AT ..... ON THE  
..... DAY OF ..... 20..

AS WITNESSES:

- 1. .... For and on behalf of: -  
the LESSEE
  
- 2. ....  
.....  
.....  
who warrants his authority to execute this  
Lease on behalf of the LESSEE