

19

Agreement of lease of a building as factory premises

AGREEMENT OF LEASE

1 Parties

The parties to this lease are

1.1 (*full name of lessor*) (“the Lessor”); and

1.2 (*full name of lessee*) (“the Lessee”).

2 Interpretation

2.1 In this lease, except in a context indicating that some other meaning is intended,

2.1.1 “**Associate**” in relation to the Lessee means a company which is for the time being

2.1.1.1 a subsidiary or holding company of the Lessee within the meaning ascribed to such terms in the Companies Act 61 of 1973; or

2.1.1.2 a subsidiary or holding company of a company referred to in 2.1.1.1 above;

2.1.2 “**the Building**” means the building known as (*name of building*) situated on the Property, and includes, where the context so allows, all permanent improvements on the Property;

2.1.3 “**Common Areas**” means portions of the Building which are not suitable for letting and are not actually let by the Lessor;

2.1.4 “**day**” means any day of the week, excluding Sundays and public holidays;

2.1.5 “**the Lease Period**” means the period for which this lease subsists, including any period for which it is renewed;

2.1.6 “**month**” means a calendar month, and more specifically

2.1.6.1 in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and

2.1.6.2 in any other context, a month of the calendar, that is, one of the 12 months of the calendar, and “monthly” has the corresponding meaning;

2.1.7 “**the Premises**” means the portion of the (*specify*) floor of the Building identified by (*specify markings, lettering, etc*) on the annexed plan signed by the parties and having a Rentable Area of (*specify*) square metres;

2.1.8 “**the Property**” means (*describe*);

2.1.9 “**the Rates**” means the assessment rates payable on the Property and includes any other charges payable by the Lessor to the local authority (such as, but not limited to, refuse removal charges or sanitary fees), but not charges for water, electricity or gas;

2.1.10 “**Rentable Area**” in relation to the Premises means the area of the Premises determined in accordance with clause 17;

2.1.11 “**year**” means a period of 12 consecutive months, and “yearly” refers to a year commencing on the date on which this lease comes into operation or any anniversary of that date;

2.1.12 reference to notices, statements and other communications by or from the Lessor include notices by or from the Lessor's agent;

2.1.13 expressions in the singular also denote the plural, and vice versa;

2.1.14 words and phrases denoting natural persons refer also to juristic persons, and vice versa; and

2.1.15 pronouns of any gender include the corresponding pronouns of the other gender.

2.2 Any provision of this lease imposing a restraint, prohibition or restriction on the Lessee shall be so construed that the Lessee is not only bound to comply therewith but is also obliged to procure that the same restraint, prohibition or restriction is observed by everybody occupying or entering the Premises or any other part of the Property or the Building through, under, by arrangement with, or at the invitation of, the Lessee, including (without limiting the generality of this provision) its Associates and the directors, members, officers, employees, agents, customers and invitees of the Lessee or its Associates.

2.3 Clause headings appear in this lease for purposes of reference only and shall not influence the proper interpretation of the subject matter.

2.4 This lease shall be interpreted and applied in accordance with South African law.

3 Lease: Letting and hiring

The Lessor lets and the Lessee hires the Premises on the terms of this lease.

4 Duration

This lease shall come into operation on (*specify date*) and shall subsist for (*specify*) years and (*specify*) months from that date.

(*Alternatively:*

This lease shall come into operation on (*specify date*) and shall subsist from month to month, being terminable on one month's notice in writing from either party to the other (, which notice shall not be given so as to terminate this lease with effect prior to (*specify date*)).)

5 Rent

5.1 The rent shall be

5.1.1 R..... (.....**RAND**) for each month of the first year of the Lease Period;

5.1.2 R..... (.....**RAND**) for each month of the second year; (*and so on*).

(*Alternative clause 5.1:*

5.1 The rent shall be

5.1.1 R..... (.....**RAND**) for each month of the first year of the Lease Period; and

5.1.2 an amount for each month of every subsequent year of the Lease Period which is% (.....**PERCENT**) greater than the amount of the rent for the last month of the preceding year.)

(*Further alternative clause 5.1, where the area of the premises is stipulated in clause 2.1.8:*

5.1 The rent shall be

5.1.1 R..... (.....**RAND**) per square metre of the Premises for each month of the first year of the Lease Period, namely R..... (.....**RAND**);

5.1.2 R..... (.....**RAND**) per square metre of the Premises for each month of the second year of the Lease Period, namely **R**..... (.....**RAND**); (*and so on*.)

5.2 The Lessee shall pay the rent monthly in advance on or before the (*specify*) day of every month.

6 Operating costs

6.1 For the purposes of this clause 6

6.1.1 “the Operating Costs” means the reasonable costs (for which the Lessee is not otherwise liable in terms of this lease) incurred by the Lessor in connection with the ownership, management, maintenance, repair and operation of the Property and the Building, including, but not limited to, the Rates and the costs of

6.1.1.1 cleaning the Building and the Property;

6.1.1.2 providing security in respect of the Building;

6.1.1.3 maintaining lifts, if any;

6.1.1.4 repairing and maintaining air-conditioning and air-conditioning installations, if any;

6.1.1.5 insuring the Building;

6.1.1.6 providing electricity, water, gas, oil, or any necessary service to Common Areas;

6.1.1.7 maintaining internal and external roofs, walls and finishes;

(Specify any other reasonable costs which the lessor wishes to include specifically in the operating costs.)

and

6.1.2 “the Lessee’s Contribution” means

6.1.2.1 R..... (.....**RAND**) for each month of the first year of the Lease Period; and

6.1.2.2 an amount for each month of every subsequent year of the Lease Period which is% (.....**PERCENT**) greater than the amount payable for the last month of the preceding year.

(Alternative clause 6.1.2:

6.1.2 “the Lessee’s Contribution” means

6.1.2.1 R..... (.....**RAND**) per square metre of Rentable Area of the Premises for each month of the first year of the Lease Period; and

6.1.2.2 an amount for each month of every subsequent year of the Lease Period which is% (.....**PERCENT**) greater than the amount payable for the last month of the preceding year.

(Further alternative clause 6.1.2:

6.1.2 “the Lessee’s Contribution Percentage” means% (.....**PERCENT**.)

6.2 The Lessee shall be obliged to contribute towards the Operating Costs incurred during the Lease Period by way of monthly payments to the Lessor in the amount of the Lessee’s Contribution, payable monthly in advance together with and in addition to the rent.

(Alternative clause 6.2:

6.2 The Lessee shall be obliged to contribute towards the Operating Costs incurred during the Lease Period to the extent of the Lessee’s Contribution Percentage thereof as follows:

6.2.1 The Lessor may from time to time give notice in writing to the Lessee of

6.2.1.1 the Lessor's estimate of the Operating Costs for any period of months specified in such notice which is, or includes, part of the Lease Period ("the Specified Period");

6.2.1.2 the monthly amount of such estimate, that is, the amount arrived at by dividing the amount of the estimate by the number of months in the Specified Period; and

6.2.1.3 the amount of the Lessee's Contribution Percentage of such monthly amount ("the Provisional Contribution").

6.2.2 The Lessee shall then pay the Provisional Contribution to the Lessor monthly in advance over the Specified Period together with and in addition to the rent. If, however, the Lessor's notice is received by the Lessee after the Specified Period has commenced, the Provisional Contributions for the months which have expired prior to the Lessee's receipt of such notice shall not be payable by the Lessee.

6.2.3 The Specified Period may not be less than (*specify*) months or more than (*specify*) months.

6.2.4 Within (*specify period of days or months*) after the end of the Specified Period, the Lessor shall give the Lessee a further notice in writing setting out

6.2.4.1 in the form of an itemised statement, the Operating Costs for the Specified Period as they were actually incurred; and

6.2.4.2 the amount by which the total payments made by the Lessee to the Lessor in terms of clause 6.2.2 above have exceeded or fallen short of the Lessee's Contribution Percentage of the actual costs.

6.2.5 If there has been such an excess, the Lessor shall then immediately repay the amount thereof to the Lessee. If there has been such a shortfall, the Lessee shall then immediately pay the amount thereof to the Lessor. (If the Lessee has made no Provisional Contributions at all for the Specified Period, there shall be deemed to be a shortfall equivalent to the full amount of the Lessee's Contribution Percentage of the actual costs for the Specified Period.)

6.2.6 If this lease terminates before the end of the Specified Period, the references to the Specified Period in clauses 6.2.2, 6.2.4 and 6.2.5 above shall apply only to the portion of the Specified Period which falls within the Lease Period, but this provision shall not be so construed as to circumscribe the damages, if any, recoverable by the Lessor from the Lessee in consequence of any premature termination of this lease or any breach preceding such termination.)

6.3 Any dispute between the Lessor and the Lessee concerning the Lessee's liability for any amount claimed by the Lessor under this clause 6, whether related to reasonableness or any other factor or fact, shall be determined by the Lessor's auditors acting as experts and not as arbitrators and their decision shall be final and binding on the parties, provided that

6.3.1 such auditors will have made such determination in good faith and after taking all reasonable measures to verify the relevant information; and

6.3.2 if the dispute is determined in favour, or substantially in favour, of the Lessor, the Lessee shall bear, and pay on demand to the Lessor or its auditors, the reasonable costs of the determination and all expenses incurred by the auditors in connection therewith.

(The following alternative clause 6 should be used where the lessor does not wish to recover a contribution towards operating costs from the lessee, but only a share of increases in the rates:

6 Increases in the rates

6.1 Whenever the Rates are increased during the Lease Period, the Lessor may, by written notice to the Lessee, increase the monthly rent for the Premises by an amount which bears the same ratio to the increase in the Rates, calculated on a monthly basis, as the rent payable by the Lessee for the Premises bears for the time being to the total rent receivable by the Lessor from all tenants of the Building. Every such increase in the rent shall take effect on the first day of the month following that in which the Lessor's notice of the increase is received by the Lessee or, whichever is the later, the date on which the corresponding increase in the Rates takes effect.

6.2 For the purposes of clause 6.1, any premises in the Building which are not part of the Common Areas but are unlet for the time being shall be deemed to be let for the rent that was last receivable by the Lessor for the same premises or, if they were never let, a fair market rent determined in good faith by a reputable estate agent appointed by the Lessor.)

7 Additional charges In addition to paying the rent and other amounts, the Lessee shall reimburse the Lessor, monthly in arrear, within (*specify*) days after receiving an account from the Lessor reflecting the amount(s) so payable, with the cost of electricity, water and gas consumed on the Premises, determined at prevailing municipal rates in accordance with readings of separate submeters or, if there are no such submeters, on the basis of the Lessee being liable to bear% (.....PERCENT) of the total cost of all electricity, water and gas consumed on the Property.

8 Payments

8.1 All payments due by the Lessee to the Lessor under this lease shall be made to (*specify lessor or agent*) at (*place*) or to such other person, if any, at such other place, if any, as the Lessor has designated for the time being by written notice to the Lessee.

8.2 The Lessee shall not withhold, defer, or make any deduction from any payment due to the Lessor, whether or not the Lessor is indebted to the Lessee or in breach of any obligation to the Lessee.

8.3 The rent and all other amounts payable by the Lessee under this lease shall be inclusive of value-added tax in so far as it is applicable.

(*Alternatively:*

The rent and all other amounts payable by the Lessee under this lease shall be net of value-added tax in so far as it is applicable and such tax shall be recoverable by the Lessor from the Lessee in addition to the rent and such other amounts.)

8.4 The Lessee shall be liable for interest on all overdue amounts payable under this lease at a rate per annum% (.....PERCENT) above the (*specify*) rate per annum of (*name of bank*) from time to time, reckoned from the due dates of such amounts until they are respectively paid.

9 Deposit

9.1 On entering into this lease the Lessee shall pay the Lessor a deposit of R..... (.....RAND), which amount the Lessor may apply, in whole or part, in meeting any payment due by the Lessee to the Lessor at any time during the Lease Period or after the termination of this lease.

9.2 Whenever during the Lease Period the deposit is so applied in whole or part, the Lessee shall on demand reinstate the deposit to its original amount.

9.3 As soon as all the obligations of the Lessee to the Lessor have been discharged following the termination of this lease, the Lessor shall refund to the Lessee, free of interest, so much of the deposit as has not been applied in terms of the above provisions.

10 Insurance

10.1 The Lessee shall not keep or do in or about the Premises anything such as is liable to enhance any of the risks against which the Building is insured for the time being to the extent that such insurance is rendered void or voidable or the premiums of such insurance are, or become liable to be, increased.

10.2 Without prejudice to any other right of action or remedy which the Lessor may have arising out of a breach of the foregoing provision, the Lessor may recover from the Lessee on demand the full amount of any increase in insurance premiums in respect of the Building attributable to such breach.

10.3 For the purposes of the above provisions, the Lessee shall be entitled to assume that the Building is at all material times insured against such risks, on such terms, for such amounts and at such premiums as are for the time being usual in respect of similar Buildings in similar locations.

11 Assignment and subletting

11.1 The Lessee shall not be entitled, except with the prior written consent of the Lessor,

11.1.1 to cede or assign all or any of the rights and obligations of the Lessee under this lease; or

11.1.2 to sublet or give up possession of the Premises, in whole or part, to any third party which is not an Associate of the Lessee.

11.2 The Lessor shall not, however, unreasonably withhold its consent to a subletting of the whole of the Premises to any third party.

12 Sundry obligations of the lessee

The Lessee shall

12.1 keep the Premises clean and tidy;

12.2 not use the Premises or allow them to be used, in whole or part, for any purpose other than that of a factory for the manufacture of (*specify*);

12.3 not place or leave any article or other thing in or about any passage, lift, stairway, pathway, parking garage, or other common part of the Building so as to cause a nuisance or obstruction;

12.4 not bring into the Premises or the Building any article which, by reason of its weight or other characteristics, is liable to cause damage to the Building or the Premises;

12.5 not contravene any of the conditions of title of the Property or any of the laws, rules or regulations affecting owners, tenants or occupiers of the Property or the Building;

12.6 not cause or commit any nuisance on the Property or cause any annoyance or discomfort to other tenants or occupiers of the Building, or to neighbours in the neighbourhood;

12.7 not leave refuse or allow it to accumulate in or about the Premises except in the refuse bins provided;

12.8 refrain from interfering with the electrical, plumbing or gas installations or systems serving the Premises or the Building, except as may be necessary to enable the Lessee to carry out its obligations of maintenance and repair in terms of this lease;

12.9 take all reasonable measures to prevent blockages and obstructions from occurring in the drains, sewerage pipes and water pipes serving the Premises;

12.10 provide at the Lessee's own expense all electric, fluorescent and incandescent light bulbs required in the Premises;

12.11 be responsible for all glass, both internal and external, on the Premises;

12.12 comply with all laws and regulations relating to

12.12.1 the manufacture and handling of hazardous materials or articles;

12.12.2 the layout of factory premises and machinery situated therein; and

12.12.3 the installation or provision of safety, health and fire-fighting equipment and other similar facilities in the Premises.

13 Maintenance and repairs

13.1 The Lessee shall at its own expense and without recourse to the Lessor

13.1.1 throughout the Lease Period maintain in good order and condition the interior of the Premises and all parts thereof, including (without limitation of the generality of this obligation) all windows, doors, appurtenances, fixtures and fittings contained in the Premises;

13.1.2 promptly repair or make good all damage occurring in the Premises from time to time during the Lease Period, whatever the cause of such damage, and including damage to any part of the interior of the Premises or to any window, door, appurtenance, fixture or fitting, and replace all such items (as well as any keys) which have been broken, lost or destroyed (again regardless of cause); and

13.1.3 on the termination of this lease, howsoever and whenever it terminates, return the Premises and all such parts thereof (including all keys) to the Lessor in good order, condition and repair, fair wear and tear excepted.

13.2 If the Lessee notifies the Lessor in writing within (*specify*) days after having taken possession of the Premises of the need for any repairs to or in the Premises or of the fact that any part of the Premises, including any lock, key, door, window, appurtenance, fixture or fitting, is damaged, missing, or out of order, the Lessor shall promptly cause the necessary repair or replacement to be effected at the Lessor's own expense. If or in so far as the Lessee does not give such notice, the Lessee shall be deemed to have acknowledged that the Premises and all parts thereof were intact, in place, and in good order, condition and repair when the Lessee took possession of the Premises under this lease.

13.3 The Lessor shall be responsible for the maintenance of, and for all repairs and replacements becoming necessary from time to time in or to, the Building and all parts thereof other than those which are the responsibility for the time being of tenants or of the local authority, and the Lessor's obligations in this respect shall include the maintenance and repair of the structure of the Building, all systems, works and installations contained therein, the roofs, the exterior walls, the lifts, the grounds and gardens, and all other parts of the Common Areas.

13.4 The Lessor shall not, however, be in breach of clause 13.3 in so far as any of its obligations thereunder is not or cannot be fulfilled by reason of any *vis major* or the acts or omissions of others over whom the Lessor has no direct authority or control, and where the Lessor is indeed in breach of clause 13.3, the Lessee's only remedy against the Lessor shall be a right of action for specific performance.

13.5 Should the Lessee fail to carry out any of its obligations under this lease with regard to any maintenance, repair or replacement, the Lessor shall be entitled, without prejudice to any of its other rights or remedies, to effect the required item of maintenance, repair or replacement and to recover the cost thereof from the Lessee on demand.

14 Alterations, additions and improvements

14.1 The Lessee shall not make any alterations or additions to the Premises without the Lessor's prior written consent, but the Lessor shall not withhold its consent unreasonably to an alteration or addition which is not structural.

14.2 If the Lessee does alter, add to, or improve the Premises in any way, whether in breach of clause 14.1 or not, the Lessee shall, if so required in writing by the Lessor, restore the Premises on the termination of this lease to their condition as it was prior to such alteration, addition or improvement having been made. The Lessor's requirement in this regard may be communicated to the Lessee at any time, but not later than the (*specify*) day after the Lessee has delivered up the Premises pursuant to the termination of this lease; and this clause 14.2 shall not be construed as excluding any other or further remedy which the Lessor may have in consequence of a breach by the Lessee of clause 14.1.

14.3 Save for any improvement which is removed from the Premises as required by the Lessor in terms of clause 14.2, all improvements made to the Premises shall belong to the Lessor and may not be removed from the Premises at any time. The Lessee shall not, whatever the circumstances, have any claim against the Lessor for compensation for any improvement to the Premises, unless such improvements were made with the Lessor's prior written consent, nor shall the Lessee have a right of retention in respect of improvements.

15 Exclusion of lessor from certain liability and indemnity

15.1 The Lessee shall have no claim for damages against the Lessor and may not withhold or delay any payment due to the Lessor by reason directly or indirectly of

15.1.1 a breach by the Lessor of any of its obligations under this lease;

15.1.2 any act or omission of the Lessor or any agent or servant of, or contractor to, the Lessor, whether or not negligent, or otherwise actionable at law, and including (without limiting the generality of the foregoing) any act or omission of any cleaner, maintenance person, handyman, artisan, labourer, workman, watchman, guard or caretaker;

15.1.3 the condition or state of repair at any time of the Property, the Building or any part of the Property or the Building;

15.1.4 any failure or suspension of, or any interruption in, the supply of water, electricity, gas, air-conditioning, heating, or any other amenity or service to the Premises, the Building or the Property (including, without generality being limited, any cleaning service), whatever the cause;

15.1.5 any breakdown of, or interruption in the operation of, any machinery, plant, equipment, installation or system situated in or on, or serving, the Property, the Building or the Premises, and including (but without limiting the generality of the foregoing) any lift, geyser, boiler, burglar alarm or security installation or system, again regardless of cause;

15.1.6 any interruption of, or interference with, the enjoyment or beneficial occupation of the Premises or any of the common parts of the Property or the Building caused by any building operations or other works to or in the Building or elsewhere on or about the Property, whether by the Lessor or by anybody else; or

15.1.7 any other event or circumstance whatever, occurring, or failing to occur, upon, in or about the Property, the Building or the Premises, whether or not the Lessor could otherwise have been held liable for such occurrence or failure,

and the Lessee indemnifies the Lessor against all liability to any of the Associates, directors, members, agents, customers, servants, guests and other invitees of the Lessee or of any of its Associates, and all other persons who may enter upon the Premises or any parts thereof through or under the Lessee, in consequence of any such matter as is referred to in clauses 15.1.1 to 15.1.7 above.

15.2 The Lessor shall not, however, be excused from specific performance of any of its obligations under this lease, whether express or implied, and particularly (but not only) its obligations to afford the Lessee occupation and enjoyment of the Premises as contemplated by this lease and to carry out such maintenance and repairs as are incumbent upon the Lessor in terms hereof; and if the Lessor fails to carry out any such obligation of maintenance or repair with reasonable speed or efficiency, and persists in such default after reasonable notice in writing requiring that it be remedied, the Lessee may cause the necessary maintenance or repair (including any incidental or necessary replacement) to be carried out and may then recover the reasonable cost thereof from the Lessor on demand.

15.3 The Lessor does not warrant that the Premises are suitable for the purposes of the Lessee or any of its Associates or that the Lessee or any of its Associates will be granted any licence or consent which may be necessary for the carrying on of any business or activity in the Premises.

16 Lessor's rights of entry and carrying out of works

16.1 The Lessor's representatives, agents, servants and contractors may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the Lessee or any other occupier of the Premises,

16.1.1 enter the leased Premises in order to inspect them, to carry out any necessary repairs, replacements or other works, or to perform any other lawful function in the bona fide interests of the Lessor or any of the occupiers of the Property; or

16.1.2 carry out elsewhere in the Building or on the Property any necessary repairs, replacements or other works,

but the Lessor shall ensure that this right is exercised with due regard for, and a minimum of interference with, the beneficial enjoyment of the Premises by those in occupation thereof.

16.2 The Lessor shall not, however, cause or allow any major building works to be carried out anywhere upon the Property for a duration longer than (*specify period*) from the date of their commencement unless

16.2.1 such works are necessary and do not merely involve additions to the Building, the construction of additional buildings, or redecoration of a solely aesthetic nature; or

16.2.2 the Lessee has consented otherwise in writing.

17 Area of the premises

If it is necessary in terms of this lease to determine the area, in square metres, of the Premises or any other part of the Building, such determination shall be made according to the (*specify, for example SAPOA or BOMA*) standard method for measuring floor areas. Any dispute between the Lessor and the Lessee as to any such area shall be determined by an independent architect, acting as expert and not arbitrator, whose certificate as to such area shall be final and binding on the parties. If the parties fail to agree on the identity of such architect, he shall be appointed by the Executive Director for the time being of The South African Institute of Architects.

18 Rules

18.1 The Lessee shall at all material times comply with such reasonable rules and regulations as are laid down in writing by or on behalf of the Lessor for observance by tenants and other occupiers of the Property, their customers and their invitees, including (without generality being limited) rules and regulations in connection with

18.1.1 the security of the Property and the protection of persons and property thereon, including in particular (again without generality being restricted) any rules for the control and identification of persons and vehicles entering the Property or any parts thereof;

18.1.2 the driving and parking of vehicles on or about the Property;

18.1.3 the utilisation of common amenities and facilities on the Property;

18.1.4 the air-conditioning plant, if any, servicing the Building;

18.1.5 the prohibition or restriction of specific activities and practices which are actually or potentially detrimental to the general interests of manufacturers in the Building; and

18.1.6 the loading and off-loading of merchandise, raw materials and other articles on and about the Property.

18.2 Clause 18.1 shall not be construed as implying that the Lessor assumes any liability which it would not otherwise have had in connection with the subject matter of any such rule or regulation.

19 Parking and loading

19.1 The Lessee shall throughout the Lease Period (*or* from month to month, such arrangement being terminable on one month's notice in writing from the Lessor to the Lessee or vice versa,) have the

exclusive use of loading bay(s) and parking bay(s)/garage(s) No(s) (*specify*) in (*specify where in or about the building*) at an initial monthly rental of R..... (.....RAND), payable in addition to, and increasing from time to time simultaneously with and proportionately to, the rent for the Premises (whatever the cause or basis of such increase).

19.2 All the terms of this lease relating to the Premises themselves shall apply *mutatis mutandis* to the loading and parking bay(s)/garage(s) referred to in clause 19.1 except those which are obviously inapplicable.

19.3 Without derogation from any rules or regulations in force for the time being as envisaged in clause 18.1, the Lessee shall procure that the loading and off-loading of merchandise, raw materials and other articles in connection with the business carried on in the Premises are carried out

19.3.1 only in the bay(s) let to the Lessee in terms of clause 19.1 and such other loading bay(s)/area(s) as are provided for the purpose; and

19.3.2 with due regard and consideration for the interests of other manufacturers in the Building and the general public.

19.4 The arrangements in terms of clause 19.1 shall at all events terminate simultaneously with this lease in so far as it relates to the Premises.

20 Damage to or destruction of premises

20.1 If the Premises are destroyed or so damaged that they can no longer be beneficially occupied, this lease shall terminate when that happens unless the parties agree otherwise in writing.

20.2 If the Premises are significantly damaged but can still be beneficially occupied, this lease shall remain in force and the Lessor shall repair the damage without undue delay but the rent shall be abated so as to compensate the Lessee fairly for the effects of the damage and repair work on the enjoyment of the Premises. Failing agreement on such abatement or on the applicability of this clause to any particular circumstances, the matter shall be referred to an expert appointed by the parties jointly or, if they do not agree on such appointment, nominated by the President for the time being of The Institute of Estate Agents of South Africa, and the decision of such expert shall be final and binding. The expert's fees and disbursements, including any inspection costs, shall be borne and paid by the parties in equal shares. Pending determination of the abatement the Lessee shall continue to pay the full rent of the Premises as if they had not been damaged (*or* be excused from the payment of rent for the Premises), and as soon as the matter has been resolved the Lessor shall make the appropriate repayment to the Lessee (*or* the Lessee shall make up the arrears in the rent as abated).

20.3 Subject to clause 15, if any damage to the Premises or the destruction thereof is caused by an act or omission for which either party is responsible in terms of this lease or in law, the other party shall not be precluded by reason of any of the foregoing provisions of this clause 20 from exercising or pursuing any alternative or additional right of action or remedy available to the latter party under the circumstances (whether in terms of this lease or in law).

21 Special remedy for breach

21.1 Should the Lessee default in any payment due under this lease or be in breach of its terms in any other way, and fail to remedy such default or breach within (*specify*) days after receiving a written demand that it be remedied, the Lessor shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the Lessor under the circumstances, to cancel this lease without further notice with immediate effect, be repossessed of the Premises, and recover from the Lessee damages for the default or breach and the cancellation of this lease.

21.2 Clause 21.1 shall not be construed as excluding the ordinary lawful consequences of a breach of this lease by either party (save any such consequences as are expressly excluded by any of the other

provisions of this lease) and in particular any right of cancellation of this lease on the ground of a material breach going to the root of this lease.

21.3 In the event of the Lessor having cancelled this lease justifiably but the Lessee remaining in occupation of the Premises, with or without disputing the cancellation, and continuing to tender payments of rent and any other amounts which would have been payable to the Lessor but for the cancellation, the Lessor may accept such payments without prejudice to and without affecting the cancellation, in all respects as if they had been payments on account of the damages suffered by the Lessor by reason of the unlawful holding over on the part of the Lessee.

22 Option of renewal

22.1 The Lessee shall have the right to renew this lease upon the terms and subject to the conditions set out below.

22.2 The period for which this lease may be so renewed is (*specify period*) commencing on (*specify date*) (*or* the date immediately following the date of expiry of the initial term of this lease).

22.3 All the terms of this lease shall continue to apply during the renewal period, save that

22.3.1 the rent shall be (*specify, adapting clause 5.1*); and

22.3.2 there shall be no further right of renewal.

22.4 The right of renewal shall be exercised by notice in writing from the Lessee to the Lessor given and received not later than (*specify date*) (*or* at least (*specify*) months/days prior to the date on which the renewal period is to commence), and shall lapse if not so exercised.

22.5 If the right of renewal is duly exercised, this lease shall be renewed automatically and without the need for any further act of the parties.

22.6 The Lessee may not, however, exercise the right of renewal while in breach or default of any of the terms of this lease.

22.7 If this lease does not endure at least for the full term for which it is initially contracted (*or* until (*specify date*)), the right of renewal shall lapse and any notice of exercise thereof given prior to such lapsing shall be null and void.

23 New tenants and purchasers

The Lessee shall at all reasonable times

23.1 during the Lease Period, allow prospective purchasers of the Property or of any shares or other interests in the Lessor; and

23.2 during the last (*specify*) months of the Lease Period, allow prospective tenants or purchasers of the Premises,

to enter and view the interior of the Premises.

24 Costs The legal costs incurred in the preparation of this lease and the stamp duty payable thereon shall be borne and paid by (*specify the lessor, the lessee, or the parties in equal shares*).

25 Domicilia and notices

25.1 The parties choose as their *domicilia citandi et executandi* the addresses mentioned in clause 25.2 below, provided that such *domicilium* of either party may be changed by written notice from such party to the other party with effect from the date of receipt or deemed receipt by the latter of such notice.

25.2

25.2.1 The Lessor: (*specify full address*)

25.2.2 The Lessee: (*specify full address*)

25.3 Any notice, acceptance, demand or other communication properly addressed by either party to the other party at the latter's *domicilium* in terms hereof for the time being and sent by prepaid registered post shall be deemed to be received by the latter on the (*specify*) business day following the date of posting thereof. This provision shall not be construed as precluding the utilisation of other means and methods (including telefacsimile) for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption of delivery shall arise if any such other means or method is used.

26 Whole agreement

26.1 This is the entire agreement between the parties.

26.2 Neither party relies in entering into this agreement on any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this agreement as warranties or undertakings.

26.3 No variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by both parties.

27 Non-waiver

27.1 Neither party shall be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this lease by reason of such party having at any time granted any extension of time for, or having shown any indulgence to, the other party with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against the other party.

27.2 The failure of either party to comply with any non-material provision of this lease shall not excuse the other party from performing the latter's obligations hereunder fully and timeously.

28 Warranty of authority

The person signing this lease on behalf of the Lessor expressly warrants his authority to do so.

29 Suretyship

This lease is subject to the suspensive condition that (*name of surety and co-principal debtor*) becomes bound to the Lessor in writing on the terms of the draft document annexed to this lease as surety and co-principal debtor for all the obligations of the Lessee to the Lessor under this lease as well as those arising in consequence of any termination thereof. If that condition remains unfulfilled by (*specify time and date*) or any later time and date agreed upon between the parties in writing, this lease shall not come into operation but shall be null and void save that the Lessee shall then solely bear and pay, or reimburse the Lessor on demand with, the costs of this lease and the Lessor's expenses in reletting the Premises, including any agent's commission and advertising costs.

30 Preliminary works

30.1 In this clause

30.1.1 "the Preliminary Works" means the alterations and improvements provided for in clause 30.2; and

30.1.2 “the Architect” means the architect engaged by the Lessor in connection with alterations and improvements in and to the Building.

30.2 The Lessor shall cause the Premises to be altered and improved in accordance with the plans and specifications (*or* schedule of finishes) signed by the parties.

30.3 If the cost to the Lessor of the Preliminary Works exceeds R..... (.....**RAND**), the Lessee shall reimburse the Lessor with the excess on demand (*or* the rent shall be increased as set out in the schedule annexed to this lease marked (*specify*)).

30.4 The Lessor shall take all reasonable measures to have the Preliminary Works completed prior to the date fixed for the commencement of this lease, but if they are not completed by that date

30.4.1 the commencement of this lease shall be delayed until such later date as the Lessor may reasonably specify on (*specify*) days’ prior notice in writing to the Lessee;

30.4.2 the Lease Period shall still expire on the same date as that on which it should otherwise have expired;

30.4.3 the rent for the period from the date on which this lease commences until the end of the month in which that date falls (“the First Rental”) shall be an amount which bears the same ratio to the rent that should otherwise have been payable for that month as the number of days in that period bears to the number of days in that month;

30.4.4 the First Rental shall be paid within (*specify*) days after the date on which this lease has commenced;

30.4.5 the Lessor shall not be liable to the Lessee or any Associate of the Lessee for any damages whatsoever in consequence of the delay in the commencement of the lease, regardless of the cause thereof, whether or not the Lessee cancels or resiles from this lease in terms of clause 31.4.6; and

30.4.6 the Lessee shall not be entitled to cancel or resile from this lease by reason of the delay unless it extends beyond (*specify period*) after the date on which this lease should have commenced in the first instance, and may then do so with immediate effect on written notice to the Lessor (but not after the arrival of the date of commencement specified by the Lessor in terms of clause 31.4.1).

30.5 Any dispute between the parties about whether the Preliminary Works are complete at any time, when they were completed, the cost thereof to the Lessor, or the reasonableness of any date specified by the Lessor in terms of clause 31.4.1 shall be determined by the Architect, acting as an expert and not an arbitrator, and the certificate of the Architect on the matter in issue shall be final and binding on the parties.

31 Sale of premises

The validity of this lease shall not in any way be affected by the transfer of the Premises from the Lessor pursuant to a sale thereof. It shall accordingly, upon registration of transfer of the Premises into the name of the purchaser, remain of full force and effect save that the purchaser shall be substituted as lessor and acquire all rights and be liable to fulfil all the obligations which the Lessor, as lessor, enjoyed against or was liable to fulfil in favour of the Lessee in terms of the lease.

32 Termination by death or insolvency

32.1 This lease shall not terminate with the death of either the Lessor or the Lessee. The executor of the deceased Lessee’s estate shall have the option, depending upon the circumstances of the estate, either to abide by the contract for the remainder period of the lease (the successor or successors of the Lessee assuming his rights and obligations) or to cancel this lease by giving the Lessor (*specify number of*) months written notice of termination, such notice to be given not more than (*specify number of*) months after the death of the Lessee.

32.2 The insolvency of either the Lessor or the Lessee shall not terminate this lease. However, the trustee of the Lessee's insolvent estate shall have the option to terminate this lease by notice in writing to the Lessor. If the trustee does not within three months of his appointment as trustee notify the Lessor that he desires to continue with the lease on behalf of the estate, he shall be deemed to have terminated the lease at the end of the three months.

SIGNED at (*place*) on this (*day, month, year*) in the presence of the undersigned witnesses

Witnesses:

1
2
(*Signatures of witnesses*) (*Signature of lessor*)

SIGNED at (*place*) on this (*day, month, year*) in the presence of the undersigned witnesses

Witnesses:

1
2
(*Signatures of witnesses*) (*Signature of lessee*)

Supplementary clause for use when a lease is signed by a trustee or nominee for a company or close corporation as lessee

1 Position of signatory

1.1 If the signatory to this lease on behalf of the Lessee ("the Signatory") acts in the capacity of trustee, agent or nominee for a company or close corporation to be formed and

1.1.1 such company or close corporation is not registered within 21 (TWENTY-ONE) days after the conclusion of this lease; or

1.1.2 if having been so registered it does not adopt and ratify this agreement without modification within 10 (TEN) days after such registration; or

1.1.3 having so adopted and ratified this agreement, it does not within 10 (TEN) days thereafter give written notice to the Lessor of its registration number and of the adoption and ratification accompanied by a certified copy of the resolution recording the same, the Signatory shall be the lessee in his personal capacity.

1.2 Unless clause 1.1 applies, the Signatory by his signature hereto shall be bound as Lessee for all the obligations of the Lessee under this lease and for the payment of all damages for which the Lessee may become liable to the Lessor in consequence of any breach of this lease by the Lessee or any cancellation of this lease attributable to any such breach.

1.3 In connection with the obligations undertaken by the Signatory in terms of clause 1.2

1.3.1 the Signatory chooses *domicilium citandi et executandi* at (*specify*) and agrees that the provisions of clause (*specify clause of the lease dealing with domicilia*) shall apply *mutatis mutandis*; and

1.3.2 the Signatory agrees that no indulgence extended by the Lessor to the Lessee shall discharge him (*or* her) from liability to the Lessor under clause 1.2.

25

Special clauses in a lease of licensed premises

Structural additions

1.1 The Lessee as holder of a liquor licence, shall not be entitled to effect any structural alterations, additions or reconstruction of the premises or to extend the premises without the consent of the chairperson of the Liquor Board of the province concerned.

1.2 If the Lessee of premises who applies for the grant of a liquor licence is required by the Liquor Board to effect structural alterations or additions to the premises within a stated time, the Lessee may deliver a request in writing to the Lessor to comply with the requirements of the Board within the stated time. If the Lessor fails to comply with the request and if a reasonable estimate of the costs of the alterations or additions does not exceed R2 000 (TWO THOUSAND RAND) the Lessee shall be entitled to effect the alterations and additions himself and to deduct the amount not exceeding R2 000 (TWO THOUSAND RAND) from the rental, notwithstanding any other terms of this contract.

1.3 Should the estimated costs of alterations or additions exceed R2 000 (TWO THOUSAND RAND) and the Lessor fails to comply with the Lessee's request that the alterations or additions be done by him the Lessee shall have the option to cancel this lease with immediate effect by written notice to the Lessor or to effect the alterations or additions himself at his own expense and to be reimbursed by the Lessor, provided that the Lessor shall in that event be entitled to increase the rental by a sum not exceeding 15% of the expenditure incurred by the Lessee as from the date of completion of the alterations or additions.