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Agreement of lease of grazing lands

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 “**Charges**” means levies, taxes, fees or other amounts payable by the Lessor to any authority having jurisdiction over the Property that arise from the ownership and use of the Property;

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

2.1.3 “**the Grazing Land**” means the Property and the Improvements;

2.1.4 “**the Improvements**” means the buildings, installations, irrigation works, structures, dams and roads together with any pumps or integral machinery which form part of the foregoing and all fences, enclosures, stalls and pens on the Grazing Land;

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 Property**” means (*describe*);

2.1.8 “**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;

2.1.9 references to notices, statements and other communications by or from the Lessor include notices by or from the Lessor’s agent;

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

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

2.1.12 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 Grazing Land through, under, by arrangement with, or at the invitation of, the Lessee, including (without limiting the generality of this provision) the family, guests and employees of the Lessee and any independent contractors or workers engaged by the Lessee.

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 Grazing Land on the terms of this lease.

4 Use of the grazing land

4.1 The Grazing Land is let to the Lessee for the purpose of grazing for not more than

4.1.1 (*specify number*) sheep; and

4.1.2 (*specify number*) head of cattle,

and shall not be used for any other purpose whatsoever.

4.2 The Lessee shall be entitled to use water which is available on the Grazing Land strictly in accordance with the rights and obligations to which the owner of the Property is subject in regard to the use of water, whether by way of agreement or legislation or otherwise, for the watering of the animals abovementioned and for domestic use on the Grazing Land, but not otherwise.

4.3 The Lessee shall be entitled to use all dead wood which may be on the Grazing Land as may be necessary for domestic purposes for occupants of the Grazing Land but shall not cut, remove or allow to be cut or removed any other wood, nor shall he sell any such wood.

5 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 year to year, being terminable on (*specify*) months' notice in writing from either party to the other (, which notice shall not be given so as to terminate this lease with effect

5.1 prior to (*specify date*); or

5.2 otherwise than at the end of a year).)

6 Rent

6.1 The rent shall be

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

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

(*Alternative clause 6.1:*

6.1 The rent shall be

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

6.1.2 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.)

6.2 Whenever any Charges are increased during the Lease Period, the Lessor may, by written notice to the Lessee, increase the monthly rent for the Grazing Land by an amount equivalent to the increase in such Charges calculated on a monthly basis. 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 Charges takes effect.

6.3 The Lessee shall pay the rent monthly (*or* quarterly *or* half-yearly as the case may be) in advance on or before the (*specify*) day of every month (*or* quarter *or* halfyear).

7 Additional charges (*if applicable*)

In addition to paying the rent, the Lessee shall either

7.1 pay the cost of electricity, water and gas consumed on the Grazing Land directly to whomsoever shall have levied such charges; or

7.2 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 the electricity, water and gas so consumed.

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 (*if applicable*)

10.1 The Lessee shall not keep or do in or about the Grazing Land anything which is liable to enhance any of the risks against which any of the Improvements are insured for the time being or that would have the effect 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 Improvements attributable to such breach.

10.3 For the purposes of the above provisions, the Lessee shall be entitled to assume that the Improvements are at all material times insured against such risks (inclusive, inter alia, of damage by theft, fire, flood and hail), on such terms, for such amounts and at such premiums as are for the time being usual in respect of similar improvements on other grazing lands in similar locations.

11 Assignment and subletting

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

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

11.2 sublet the Grazing Land in whole or part; or

11.3 give up possession of the Grazing Land to any third party.

12 Sundry duties of the lessee The Lessee shall

12.1 conduct the grazing activities for which the Grazing Land is let in a diligent manner and follow correct grazing practice in general but shall also follow accepted grazing practice in the district in which the Grazing Land is situated;

12.2 ensure that all dwellings and other buildings on the Grazing Land that are occupied for any purpose are kept clean, tidy and habitable;

12.3 not infringe any law, servitude, licence or permit relating to the use of water;

12.4 not permit the grazing of any animals of any description which are not owned by the Lessee upon the Grazing Land;

12.5 not cause or commit any public nuisance.

12.6 not allow any person not in the bona fide employ of the Lessee to reside on the grazing land.

13 Maintenance and repairs

13.1 Subject to clauses 13.2 and 13.3 the Lessee shall at his own expense and without recourse to the Lessor

13.1.1 throughout the Lease Period maintain in good order and condition the Improvements;

13.1.2 promptly repair or make good all damage occurring to the Improvements from time to time during the Lease Period, whatever the cause of such damage and replace all such items which have been broken, lost or destroyed, again regardless of cause and without derogating from the generality of the foregoing; and

13.1.3 on termination of this lease, howsoever and whenever it terminates, return the Grazing Land and all such parts thereof aforementioned to the Lessor in good order and condition and repair, fair wear and tear excepted, provided that the Lessor shall not be obliged to compensate the Lessee for any expenditure incurred by the Lessee in complying with his obligations of maintenance, repair and replacement under this lease.

13.2 If the Lessee notifies the Lessor in writing, after having taken possession of the Grazing Land, of the need for any repairs to any of the Improvements which are damaged, missing, or out of order, the Lessor shall promptly cause the necessary repair or replacement to be effected at the Lessor's expense. If or in so far as the Lessee does not give such notice, the Lessee shall be deemed to have acknowledged that the Grazing Land and all parts thereof were intact, in place and in good order, condition and repair when the Lessee took possession of the Grazing Land 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, all systems, works and installations which are part of the Grazing Land and the roofs and the exterior walls of any buildings on the Property.

13.4 The Lessor shall not, however, be in breach of clause 13.3 in so far as any of its obligations thereunder are 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, except with the Lessor's prior written consent, which consent will not be unreasonably withheld, make any alterations or additions to the Improvements.

14.2 If the Lessee does alter, add to or improve the Grazing Land or any part thereof 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 Grazing Land on the termination of this lease to its 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 Grazing Land 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 addition or improvement which is removed from the Grazing Land as required by the Lessor in terms of clause 14.2, all additions and improvements made to the Grazing Land shall belong to the Lessor and may not be removed from the Grazing Land at any time. The Lessee shall not, whatever the circumstances, have any claim against the Lessor for compensation for any addition or improvement to the Grazing Land, nor shall the Lessee have any right of retention in respect of any 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;

15.1.3 the condition or state of repair at any time of the Grazing Land, any of the Improvements or any part of the Grazing Land;

15.1.4 any failure or suspension of, or any interruption in, the supply of water, electricity, gas, or any other amenity or service to the Grazing Land, whatever the cause;

15.1.5 any breakdown of, or interruption in the operation of, any of the Improvements or any system situated in or on, or serving the Grazing Land or the Improvements, again regardless of cause;

15.1.6 any interruption of, or interference with, the enjoyment or beneficial occupation of the Grazing Land or any part thereof;

15.1.7 any other event or circumstance whatever, occurring, or failing to occur, upon, in or about the Grazing Land, 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 members of the Lessee's household, the Lessee's servants, guests, and other invitees and all other persons who may occupy or be entitled to

occupy the Grazing Land 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 Grazing Land 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 and 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.

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

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 Grazing Land, enter the Grazing Land in order to inspect any part of it, 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 Grazing Land, 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 Grazing Land by the Lessee and those in occupation thereof.

17 Damage to or destruction of grazing land

17.1 If the Grazing Land is destroyed or so damaged that it can no longer be beneficially occupied, this lease shall terminate when that happens unless the parties agree otherwise in writing.

17.2 If the Grazing Land is significantly damaged but can still be beneficially occupied, this lease shall remain in force and the Lessor shall to the extent that such repair is possible, 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 Grazing Land. 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, by the (*specify, for example* Chairman (*or* President) for the time being of the (*specify association or body chosen*)) 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 for the Grazing Land as if it had not been damaged (*or* be excused from the payment of rent for the Grazing Land), 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).

17.3 If any damage to the Grazing Land 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 17 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).

18 Special remedy for breach

18.1 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 Grazing Land and recover from the Lessee damages for the default or breach and the cancellation of this lease.

18.2 Clause 18.1 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.

18.3 In the event of the Lessor having cancelled this lease justifiably but the Lessee remaining in occupation of the Grazing Land, 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.

19 Option of renewal

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

19.2 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).

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

19.3.1 the rent shall be (*specify, adapting clause 6.1*); and

19.3.2 there shall be no further right of renewal.

19.4 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.

19.5 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.

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

19.7 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.

20 New tenants and purchasers

The Lessee shall at all reasonable times

20.1 during the Lease Period, allow prospective purchasers of the Grazing Land or of any shares or other interest in the Lessor; and

20.2 during the last (*specify*) months of the Lease Period, allow prospective tenants or purchasers of the Grazing Land,
to enter and view the Grazing Land.

21 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*).

22 Domicilia and notices

22.1 The parties choose as their *domicilia citandi et executandi* the addresses mentioned in clause 22.2 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.

22.2

22.2.1 The Lessor: (*specify full address*)

22.2.2 The Lessee: (*specify full address*)

22.3 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.

23 Whole agreement

23.1 This lease constitutes the entire agreement between the parties.

23.2 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.

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

24 Non-waiver

24.1 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.

24.2 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.

25 Warranty of authority

The persons signing this lease on behalf of the Lessor and the Lessee expressly warrant their authority to do so.

26 Suretyship

This lease is subject to the suspensive condition that (*full 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, on demand, solely bear and pay, or reimburse the Lessor with, the costs of this lease and the Lessor's expenses in reletting the Grazing Land, including any agent's commission and advertising costs.

27 Sale of property

The validity of this lease shall not in any way be affected by the transfer of the Property from the Lessor pursuant to a sale thereof. It shall accordingly, upon registration of transfer of the Property 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.

28 Termination by death or insolvency

28.1 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.

28.2 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*)

Witnesses:

1

2

(*Signatures of witnesses*)

.....

(*Signature of lessor*)

SIGNED at (*place*) on this (*day, month, year*)

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.