



LEASE AGREEMENT FOR BUILDING AND PROPERTY

GROSS LEASE[©]

BETWEEN

EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD

(REGISTRATION NUMBER: 2003/012647/30)

(HEREINAFTER REFERRED TO AS “**LANDLORD**”)

AND

(PROPRIETARY) LIMITED

(REGISTRATION NUMBER: 2006/019757/23)

(HEREINAFTER REFERRED TO AS “**TENANT**”)

(COLLECTIVELY REFERRED TO AS “THE PARTIES”)

FOR

ERF No. _____, EAST LONDON

INITIAL: **LANDLORD:** _____

WITNESS 1: _____

WITNESS 2: _____

INITIAL: **TENANT:** _____

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INITIAL: **LANDLORD:** _____

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1. INTERPRETATION

1.1. In this agreement, clause headings are for convenience and shall be used in its interpretation unless the context clearly indicates a contrary intention; an expression which denotes any gender includes the other gender, a natural person includes an artificial or juristic person and vice versa, and the singular includes the plural and vice versa and as such the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings;

1.1.1. "**the/this agreement**" means this document together with its annexures;

1.1.2. "**architectural plans**" means the architectural plans in respect of the building, as provided for in this agreement, as annexed hereto marked "Annexure 1";

1.1.3. "**leased premises**" means the property and the building including any equipment supplied by the **LANDLORD** in terms of this lease agreement;

1.1.4. "**building**" means the building on the property, as depicted on Annexure 1 – architectural plans annexed hereto marked "Annexure 1";

1.1.5. "**property**" means **Erf in Zone 1A**, Local Municipality of Buffalo City, East London, Province of the Eastern Cape which is measuring approximately **(IN WORDS) (IN NUMBERS) MADE UP OF OFFICE SPACE AND FACTORY SPACE** as depicted in the site diagram annexure hereto marked "Annexure 2";

1.1.6. "**LANDLORD**" means the **East London Industrial Development Zone Soc Ltd.** registration number 2003/012647/30 and VAT registration number 4900213598, a company with limited liability duly incorporated according to the laws of the Republic of South Africa, herein represented by Simphiwe Nicholas Khondlo, he being duly authorised;

1.1.7. "**TENANT**" means _____ **(PROPRIETARY) LIMITED** registration number _____ and VAT registration number _____ - a company with limited liability duly incorporated according to the laws of the Republic of South Africa, herein represented by _____, he being duly authorised;;

1.1.8. "**VAT**" means Value Added Tax payable in terms of the Value Added Tax Act, No. 89 of 1991, as amended;

1.1.9. "**commencement date**" means _____ ;

1.1.10. "**initial period**" means the period commencing on the commencement date until the

INITIAL: **LANDLORD**: _____ WITNESS 1: _____ WITNESS 2: _____

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termination **DATE (IN NUMBERS)** years thereafter;

- 1.1.11. "**lease period**" means the initial period and if the renewal option is exercised, means that renewal period ;
- 1.1.12. "**renewal option**" means the renewal option in terms of **clause 3**;
- 1.1.13. "**renewal periods**" means the period of _____years immediately following the initial period;
- 1.1.14. "**occupation date**" means the date upon which the **TENANT** will be afforded occupation as contemplated by **clause 3.3**, which shall be **(DATE)**; or as agreed to between the parties;
- 1.1.15. "**lease years**" means successive periods of ONE (1) year during the lease period, the first of which lease year commences on the commencement date and terminates twelve (12) months thereafter;
- 1.1.16. "**estate service costs**" means the monies payable **for estate services** in terms of an agreement between owners or occupants of properties located within the zone, any property owners' association, **LANDLORD** or other body which exercises administrative or management control over the zone, and which are payable in respect of the leased or sold premises and as provided for in Memorandum of Agreement Part 2;
- 1.1.17. "**charges**" means the monies payable **for additional services** in terms of any regulation, rule, permit or agreement between owners or occupants of properties located within the zone, and any property owners' association, **LANDLORD** or other body which exercises administrative or management control over the zone, and which are payable in respect of the leased premises;
- 1.1.18. "**utilities service charges**" means the monies payable **for municipal services** in terms of any regulation, rule, permit or agreement by the owners or occupants of properties located within the zone to the **LANDLORD** or other body which exercises administrative or management control over the zone, and which are payable in respect of the leased premises; such monies are classed as payable to any local or governmental or other authority or entity including the **LANDLORD** in respect of the supply or electricity, water, gas and other utilities (if any) consumed on or about the leased premises and includes charges for removal of refuse, sewerage and effluent and all deposits or connection fees for such services;
- 1.1.19. "**rates and taxes**" means all rates and taxes and similar charges of whatever nature payable by the **LANDLORD** to any local or governmental or other authority by virtue of its ownership of the leased premises but excludes levies, charges, and utilities service charges;

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- 1.1.20. "**similar charges**" means the charges similar to those specifically referred to in that paragraph;
- 1.1.21. "gross **monthly rental**" means the monthly rental payable in terms of **Clause 4** and "**Annexure 3**" which is a combination of operating cost and nett rental;
- 1.1.22. "operating costs" means the monthly operating costs payable in terms of Clause 4 and "**Annexure 3**" which is defined in Clause 4;
- 1.1.23. "Nett monthly rental" means the nett income to the **LANDLORD**;
- 1.1.24. "**permitted use**" means the conduct of a **PROVED BY THE BOARD EXACT WORDING**);
- 1.1.25. "**prime rate**" means the publicly quoted basic rate of interest as determined by the **LANDLORD**'s banker from time to time, compounded monthly in arrear calculated on a three hundred and sixty five (365) day year as being its prime overdraft rate, as certified by any manager of such bank, whose appointment and designation need not be proved;
- 1.1.26. "**signature date**" means date of signature of this agreement by the signatory which is the last signing;
- 1.1.27. "**termination date**" means the date on which the lease terminates by effluxion of time or otherwise;
- 1.1.28. "**zone**" means insofar as it may be applicable, the Industrial Development Zone or similar area as determined by the **LANDLORD** and within which the property is situated;
- 1.1.29. "**business day**" means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.1.30. "**law**" means South African law of general application and includes the common law, statute, constitution, decree, treaty regulation, directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local and provincial government statutory or regulatory body) which has the force of law;
- 1.1.31. "**Independent expert**" means an independent property valuer, property broker, property economist or other suitably qualified property practitioner agreed upon by the parties.
- 1.1.32. "**Structural defect**" means any defect in reinforced concrete or structural steel work and brickwork.

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2. TENANT PERMITS, APPROVALS AND / LICENSING CONDITIONS

- 2.1. The **TENANT** shall ensure that it obtains an Environmental Impact Assessment and all other permits, approvals and / or licenses, to undertake the permitted use, from the necessary authorities as is required by law and as are required by and from the Department of Environmental Affairs and such other authorities charged with environmental protection before the occupation and / or commencement date whichever date being the first.
- 2.2. The **TENANT** is advised that it is the onus of the **TENANT** to ensure all such permits, approvals and / or licensing are obtained timously and well in advance of any such occupation / commencement date whichever is the first bearing in mind any approval periods for such permits, approval and / or licensing. The **TENANT** is advised herein that the Environmental Impact Assessment approval take a long duration of anything between nine to twelve months to obtain.
- 2.3. The **TENANT** shall ensure that it fulfils all of its responsibilities in terms of the permits, approvals and / or licenses.
- 2.4. The **TENANT** shall disclose all permits, approvals and / or licenses to the **LANDLORD** by giving the **LANDLORD** a copy thereof and upon reasonable notice from the **LANDLORD** may be requested by the **LANDLORD** to present the necessary permits for reasons of ensuring compliance.
- 2.5. Should the **TENANT** fail to comply with obtaining the necessary Environmental Impact Assessment approval, or other requisite approvals before such occupation or commencement date, whichever is the first, then that shall render the commencement of the operation in terms of the permitted use void (for as long as there is no such EIA or other approval).
- 2.6. Save for instances where the EIA is delayed and occupation and / or beneficial occupation have been granted by the **LANDLORD** to the **TENANT** for purposes other than that of operation of the permitted use, the **TENANT** shall be liable for rental and other amounts, which become due and payable. Such occupation / beneficial occupation without the requisite permit shall authorise the **LANDLORD** to exercise its discretion with regard termination of this lease and /or other agreements relating to such amounts payable.

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3. LEASE, PERMITTED USE, DURATION AND RENEWAL

- 3.1. The **TENANT** leases the leased premises from the **LANDLORD** on the terms and conditions of this agreement subject to the fulfilment of the Environmental Impact Assessment Conditions.
- 3.2. The leased premises may be used by the **TENANT** solely for purposes of the permitted use.
- 3.3. The **LANDLORD** undertakes to erect the building as required by the **TENANT** for the purposes of this lease. The building shall be in accordance with and recorded in the architectural plans and specifications which have been agreed to by the parties and which are initialled by the parties for the purposes of identification by no later than the occupation date. On such commencement date the **TENANT** shall confirm that the building has been certified as practically complete. Such building then shall be leased by the **LANDLORD** to the **TENANT** who agrees to utilise it on the terms and conditions of this agreement.
- 3.4. This agreement shall endure for the initial period.
- 3.5. The **TENANT** shall be afforded occupation of the premises on the occupation date, for the purposes of establishing _____ and generally equipping the building, for the permitted use. Such occupation shall, until the commencement date **not be subject to rental but shall be subject to estate service costs, charges and utilities service charges, rates and taxes.**
- 3.6. Provided that this lease has not been terminated and/or the **TENANT** is not in breach of any of its material terms of this agreement, the **TENANT** shall have the right and option to renew this lease for the renewal period on the same terms and conditions as are contained in this lease agreement. Provided that on the termination of the renewal period there shall be no further renewal option.
- 3.7. The escalation rate for the rental shall apply during the initial period and the escalation rates for the renewal period shall be determined in accordance with the provisions of the determination of market rental clause, clause 14 herein.
- 3.8. The estate service costs, charges and utility service charges and its escalation rates shall be determined separately to this agreement.
- 3.9. Should the **TENANT** exercise the renewal option the **TENANT** shall give the **LANDLORD** written notice of its intention not later than **SIX (6)** months before the termination of the initial period, failing which the **TENANT** shall be deemed to have elected not to exercise the renewal option.
- 3.10. In the event of the **TENANT** giving written notice in terms of clause 3.9 above, the lease shall be renewed and the duration of the lease shall be extended for an additional term of _____ **(IN WORDS)** (____ **(IN NUMBERS)**) years (the renewal period). The terms and conditions contained herein shall *mutandi mutatis* apply (excluding rental and rental

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escalation).

4. RENTAL, OPERATING COSTS AND RENTAL GUARANTEE

4.1. During the initial period the **TENANT** hereby agrees to pay the **LANDLORD** the following nett **rental** as set out in the rental schedule marked **Annexure 3** and further set out below in detail:

4.1.1. for office space ____ **RANDS** and ____ **CENTS (R.)** per square metre per month;

4.1.2. for factory and warehousing space ____ **RANDS** and ____ **CENTS (R ____.)** per square metre per month;

4.1.3. for supplementary areas ____ **RANDS** and ____ **CENTS (R ____.)** per square metre per month;

4.1.4. for land, being the extent of the leased premises, less the extent of the office space and less the extent of the factory and warehousing space and less the extent of the supplementary areas, ____ **RANDS** and ____ **CENT (R ____.)** per square meter per month;

4.2. The **TENANT** shall pay the abovementioned rentals monthly as of the commencement date of this agreement.

4.3. With effect for the initial period from the first and every subsequent yearly anniversary of the commencement date the monthly rental shall escalate at the rate of ____ **(IN WORDS)** per cent (____ **(IN NUMBERS)%**).

4.4. The **TENANT** shall be responsible for estate service costs, charges, and utilities service charges of this lease agreement from the occupation date, and as per subsequent agreements that shall be entered into between the parties.

4.5. The **TENANT** shall during the initial period pay to the **LANDLORD** **operating costs** for the building:

4.5.1. for office space, ____ **RANDS** and ____ **CENTS (R ____.)** per square metre per month which shall include:

4.5.2. for factory and warehousing space ____ **RANDS** and ____ **CENTS (R ____.)** per square metre per month; and

4.5.3. for land, being the extent of the leased premises, less the extent of the office space and less the extent of the factory and warehousing space, ____ **RANDS** and ____ **CENTS (R ____.)** per month;

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- 4.5.4. for supplementary areas will be charged at ____ **RANDS** and ____ **CENTS** (R____) per square meter per month;
- 4.6. The operating costs for services rendered by the **LANDLORD** is payable from ____ **(DATE)** and notwithstanding that the occupation date may not have occurred, free of deduction.
- 4.7. With effect for the initial period from the first and every subsequent yearly anniversary of the commencement date the monthly operating costs shall escalate at the rate of ____ **(IN WORDS)** per cent (____ **(IN NUMBERS) %**).
- 4.8. The above is on the understanding that the measurements shall be calculated as defined and recommended by the South African Property Owners Association and as is detailed in **"Methods for Measuring Floor Areas in Buildings" Document No. ISBN: 0- 620 – 34517- 9** and with particular reference to point 3. under "Industrial" annexed hereto marked **"Annexure 4"**.
- 4.9. All measurements shall be documented at the stage that the building is completed and as per the quantity surveyors measurement as annexed hereto marked **Annexure 5**.
- 4.10. Provided that the **LANDLORD** has not unlawfully deprived the **TENANT** of the use and occupation of the leased premises, the **TENANT**
- 4.10.1. may not withhold the payment of nett monthly rental or any other amounts payable in terms of this agreement for any reason whatsoever and/or attach any condition to any payment; and
- 4.10.2. shall not be entitled to apply the operation of set-off.
- 4.11. The **LANDLORD** shall be entitled in its discretion to appropriate any payment received from the **TENANT** towards the payment of any debt owing by the **TENANT** to the **LANDLORD** in terms of this agreement.
- 4.12. The escalated gross monthly rental is payable monthly in advance on the first day of each and every month with effect from ____ **(DATE)**, notwithstanding that the occupation date may not have occurred, **[if the commencement date is before the occupation date]**, free of deduction and payable as per the monthly invoices rendered by the **LANDLORD** and at an address or account number as per the invoice.
- 4.13. In addition to the rental the Tenant shall be liable for Utilities Costs and Estate Service Costs and other additional costs (where applicable), details of which shall be catered for in separate agreements and for purposes of insolvency shall be considered as part of this agreement and shall stand as a secured claim.

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- 4.14 If there is a delay of the commencement date and / occupation date that is occasioned by the actions or omissions to act by the **TENANT** as confirmed by the **LANDLORD**, the **TENANT** shall be liable for at minimum all operating costs and estate service costs for the duration of the delay from the commencement date to a maximum of three months from such date and shall forfeit any further rental holiday period (if applicable) in terms of this agreement. After such three months the tenant will be liable for full costs including monthly rental as if the tenant had occupied the leased premises after the said three months. The clause is to highlight to the **TENANT** the importance and onus to occupy on the stated occupation date.
- 4.15 In an instance where the building still needs to be constructed and the **TENANT** changes (by increase or decrease) the initial plans (first agreed architectural plans and specifications) for construction on which basis the rentals and other costs in this agreement have been proposed, then the **TENANT** shall automatically be liable for those increases / decreases in rental and other costs facilitated by those changes (increases or decreases) as per the practical completion certificate and such shall be captured in an addendum that will be signed by the **TENANT**.
- 4.16 During rental negotiations for renewals, the **LANDLORD** would take into account the compliance to the business plan and other information that the Enterprise provided and used for the project / investment to be approved by the Board of the ELIDZ.
- 4.17 **Debit Order Authorisation:** The **TENANT** shall be required to authorise the necessary debit order in favour of the **LANDLORD** for all monies due to the **LANDLORD** in terms of this agreement

5 DEPOSIT

- 5.1 The **TENANT** shall pay to the **LANDLORD**, together with the first month's rental or operating costs, a deposit equivalent to one month's gross or nett rental (whichever is applicable). Such deposit shall be held by the **LANDLORD** in an interest bearing account. The deposit plus the interest minus the administrative charges for the account and other deductions due to damages and or other claims shall be rapid to the **TENANT** on termination of this agreement or vacation of the premises (whichever comes first) and for whatever reasons.
- 5.2 The **LANDLORD** shall be entitled at any time to allocate the whole or any portion of such deposit towards the payment of any amounts payable by the **TENANT** hereunder and in arrear. Provided that, should the whole or any portion of the deposit be so allocated by the **LANDLORD**, the **TENANT** shall be obliged forthwith to reinstate the deposit to the sum aforesaid and provided further that, should any liability of the **TENANT** hereunder not, for any reason, have been ascertained at the expiration or earlier termination of this agreement the **LANDLORD** shall be entitled to retain the amount of the balance of such deposit of the time being, pending ascertainment of the amount in question.

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5.3 The **TENANT** shall not be entitled to set off any amount against the deposit, or any portion thereof, any rentals, charges or other amounts payable by the **TENANT** in terms of this agreement.

6 VAT

6.1 Gross rentals and other amounts payable by the **TENANT** to the **LANDLORD** in terms of this agreement are expressed exclusive of VAT;

6.2 Accordingly, in addition to such rentals and/or other amounts, the **TENANT** shall pay to the **LANDLORD**, simultaneously with the payment of gross monthly rental an amount equal to such VAT as may be payable in respect thereof.

7 INTEREST

7.1 Any amount which is not paid by the **TENANT** to the **LANDLORD**, in terms of this agreement, promptly on the due date for payment thereof shall, without prejudice to any other rights available to the **LANDLORD**, bear interest at a rate equal to two (2) percentage points above the prime rate, calculated from the due date for payment up to and including the date of receipt of payment by the **LANDLORD**.

8 RATES AND TAXES

8.1 The **LANDLORD** shall pay the rates and taxes.

8.2 The **TENANT** shall be responsible for increased portions of the rates and taxes during the lease.

8.3 The **LANDLORD** shall timeously advise the **TENANT** of any increases in rates and taxes.

9 GENERAL OBLIGATIONS OF TENANT

9.1 The **TENANT** shall during the lease period:

9.1.1 comply with every applicable law relating to the use and occupation of the leased premises and shall not (without limiting the generality of the foregoing) do anything or omit to do anything or allow anything to be done or allow anything to be omitted to be done that is or may constitute a contravention of any such law;

9.1.2 is obliged, at its own expense, to comply with all the requirements of all laws, directly or indirectly applicable to the leased premises and/or to the type of business conducted therein by the **TENANT**;

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- 9.1.3 strictly comply with all the requirements of the East London Industrial Development Zone Rules, which it acknowledges itself to be familiar with;
- 9.1.4 abide by, and comply with, and not object to and without compensation to the Title Deed Conditions imposed by the Local Municipality of Buffalo City onto the **LANDLORD**, which are including but not limited to the following:
- 9.1.4.1 allow gas mains, the capacity, telephone and television cables and/or other water pipes and foul sewers and storm water pipes, ditches and channels of any other land unit or units to be conveyed across this land unit concerned, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereupon if considered necessary by the Council, in such manner and position as may from time to time be reasonably required;
 - 9.1.4.2 allow right of access to the land at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above, subject to compliance with any applicable customs and excise regulation
 - 9.1.4.3 receive such material or permit such excavation on the land unit as may be required to allow use of the full width of and abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finely constructed and the level of the land unit, unless he leads to build retaining walls to the satisfaction of and within a period to be determined by the Council;
- 9.1.5 keep the leased premises in a neat, clean and tidy condition;
- 9.1.6 ensure all areas not built upon shall be maintained in the clean and tidy state, having regard to the use and application of the land, and not constitute a nuisance by the generation of dust, smoke or any other objectionable matter
- 9.1.7 not do or permit to be done anything in or upon the leased premises or any part thereof which may cause or be a nuisance or annoyance to other persons or neighbours generally
- 9.1.8 not vacate the leased premises or allow the leased premises to be and remain unoccupied except on days which are not business days;
- 9.1.9 annually and not later than ninety (90) days after the financial year-end of the **TENANT** provide the **LANDLORD** with a copy of the audited financial statements of the **TENANT** for the immediately preceding year.

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9.2 The **LANDLORD** shall be entitled to request, upon reasonable notice, the **TENANT** to produce such information that the **LANDLORD** requires, in terms of the Manufacturing and Development Act and its Regulations, as amended from time to time including but not limited to licences/permits to carry out the operation, as per the permitted use, proof of registration with the Compensation Fund and such shall be produced within fourteen (14) days of such reasonable notice.

9.3 The **TENANT** further warrants that the **TENANT** is in good standing with the Compensation Commissioner and shall produce a letter of good standing every year.

10 **HOLDING OVER**

10.1 If the **TENANT** should, after expiration or earlier termination of this lease, remain in occupation of the leased premises, without having negotiated and signed a new lease agreement or a renewal of the current lease, then

10.1.1 the terms and conditions of this lease shall, mutatis mutandis, remain applicable to the **TENANT**, save that the lease shall be deemed to have been entered into for a month at a time only;

10.1.2 the **TENANT** shall continue to pay the gross monthly rental and operating costs (escalated in terms of clause 14), and other amounts due to the **LANDLORD** in terms of this lease on the due dates for payment thereof;

10.1.3 the **LANDLORD** shall be entitled to recover and accept those payments from the **TENANT**;

10.1.4 the recovery and acceptance by the **LANDLORD** of those payments shall be without prejudice to, and shall not in any manner whatsoever affect, the **LANDLORD's** claim to cancellation of this lease or of any other nature whatsoever.

10.2 Payments made to the **LANDLORD** in terms of clause 10.1. above, shall be regarded as amounts paid by the **TENANT** on account of loss and/or damage sustained by the **LANDLORD** as a result of the holding over by the **TENANT** of the leased premises;

10.3 No relaxation or indulgence which the **LANDLORD** may show to the **TENANT** shall in any way prejudice any of its rights hereunder and, in particular, no acceptance by the **LANDLORD** of rental after the due date shall preclude it from exercising any right enjoyed by it hereunder by reason of any subsequent payment not being made strictly on due date.

10.4 Unless otherwise stated by the **LANDLORD** or its agents, acceptance of any rental, operating costs and other payments shall in no way whatsoever prejudice or operate as a waiver, rescission or abandonment of any termination or right of termination.

11 **LANDLORD'S RIGHT OF ENTRY**

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11.1 The **LANDLORD** may at all reasonable times enter the leased premises for purposes of inspecting the leased premises, the fixed assets and/or the movable assets.

11.2 The **LANDLORD** shall be entitled:

11.2.1 at any time during the lease period to display "for sale" signs on or about the leased premises; and/or

11.2.2 with effect from the date 3 (three) months before the termination date display "to let" signs on or about the leased premises;

11.2.3 to reasonable access (both during and after normal business hours) to the leased premises for purposes of exhibiting the lease premises to prospective purchasers and/or **TENANTS**.

12 **SERVITUDES**

12.1 In respect of the land occupied by **TENANT**, the **LANDLORD** shall, for the purposes of inspecting, maintaining or undertaking works to modify, enlarge or change services;

12.1.1 be permitted to enter onto the **TENANT's** property;

12.1.2 undertake reasonable surveys in relation to servitudes and land matters;

12.1.3 undertake the works contemplated in this paragraph;

12.1.4 register servitudes.

12.2 On the basis that the actual cost of the works contemplated as well as the cost of reinstatement or necessary modification shall be for the account of the **LANDLORD** and the **TENANT** shall have no further or additional claim (other than the necessary cost of reinstatement or necessary modification). The **TENANT** shall have no claim for consequential damages, cost of loss of production for any other cause whatever and shall indemnify the **LANDLORD** from any loss or damage occurred as a result of the above.

13 **REGISTRATION AND COSTS**

13.1 This agreement shall be at the instance of either party notarially registered in which event it shall be registered by a notary public nominated by the **LANDLORD** and such costs shall be for the both parties equal expense.

13.2 This agreement shall be registered by conveyancers nominated by the **LANDLORD**.

13.3 To the extent that the properties are to be encumbered by the **LANDLORD** by mortgage bond in favour of any financier of the **LANDLORD**, the **TENANT** waives (and agrees to waive) in favour of such mortgage bond any preference afforded to the **TENANT** in terms of this agreement.

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WITNESS 1: _____

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INITIAL: **TENANT**: _____

WITNESS 1: _____

WITNESS 2: _____

14 DETERMINATION OF MARKET RENTAL

14.1 In instances where a market related rental and/or a market related escalation rate is not determined, the following shall apply:

14.1.1 either party shall be entitled, by written notice to the other to require the other to engage in negotiations in good faith with a view to agreeing to such market related rental and/or market related escalation rate, as the case may be;

14.1.2 If within ten (10) days after either party have given written notice to the other as contemplated in clause 14.1.1, the parties have failed to reach agreement with regard to the market related rental and/or market related escalation rate concerned, such market related rental and/or market related escalation rate, as the case may be, shall be determined by an independent expert in accordance with the provisions of this clause;

14.1.3 If the parties fail to reach agreement with regard to the identity of the independent expert within two (2) days after either party requires the other in writing to do so, the independent expert shall be appointed by the President for the time being of the South African Property Owners Association or its successor body.

14.2 It is a fundamental principle that for purposes of determining market related rentals and/or market related escalation rates no subsidy, rebate or other form of concession or incentive which may be available (and whether made available by the **LANDLORD** and/or any third party) to purchasers or occupiers of property or premises within the zone, shall be taken into account.

14.3 It is the intention that the market related rental and/or market related escalation rate, as the case may be, shall be determined as quickly as reasonably possible in the circumstances;

14.4 In determining the market related rental and/or the market related escalation rate, as the case may be, with regard to an independent expert the following provisions shall apply:

14.4.1 the independent expert shall act as an expert and not as an arbitrator;

14.4.2 each party shall be entitled to make representations to the independent expert in such manner and form and at such time and venue as the expert shall determine in his sole discretion;

14.4.3 the independent expert shall be entitled to rely on his own professional knowledge and expertise and/or shall be entitled to obtain further advice, information and/or evidence in relation to the matter concerned from such source and in such manner as the expert shall determine in his sole discretion;

14.4.4 Fees of the independent expert and any costs incurred by him shall be borne and paid by the

INITIAL: **LANDLORD**: _____ WITNESS 1: _____ WITNESS 2: _____

INITIAL: **TENANT**: _____ WITNESS 1: _____ WITNESS 2: _____

parties equally, unless the independent expert determines otherwise.

- 14.5 All costs which the parties may incur in relation to the determination of the market related rental and/or market related escalation, as the case may be, including all costs incurred by the parties in relation to their submissions (if any) to the independent expert shall be for their own account.

15 CONSTRUCTION OF BUILDING

- 15.1 The building shall be in accordance with the architectural plans and specifications with an electrical supply wired up to the internal distribution board as agreed to by the parties.

16 ALTERATIONS

- 16.1 The **TENANT** may not effect alterations, improvements or additions to the leased premises without the prior written consent of the **LANDLORD** and such alternation, improvements or additions shall be in terms of the Design Standard Guidelines for the Zone.
- 16.2 The **LANDLORD** reserves the right to require the building and its alterations to be removed or to do so for the **TENANT**'s costs.
- 16.3 Notwithstanding the provisions of clause 16.1. the **TENANT** shall, if required thereto by the **LANDLORD** immediately after the termination date, remove all or any improvements, alterations or additions effected by the **TENANT** to the leased premises and reinstate the leased premises to its original condition and make good all damage occasioned by such removal.
- 16.4 Any alterations, improvements or additions which the **TENANT** may effect to the leased premises (with or without the consent of the **LANDLORD**) shall become the property of the **LANDLORD**, in the discretion of the **LANDLORD** and the **TENANT** shall not be entitled to the payment of any compensation in respect thereof.
- 16.5 The original condition of the building shall be determined on the occupation date and upon inspection of the building and signing of a certificate certifying the condition of the building by the **LANDLORD** and the **TENANT**.

17 WARRANTIES

- 17.1 The leased premises are leased by the **LANDLORD** to the **TENANT** "voetstoots". The

INITIAL: **LANDLORD**: _____ WITNESS 1: _____ WITNESS 2: _____

INITIAL: **TENANT**: _____ WITNESS 1: _____ WITNESS 2: _____

LANDLORD gives no warranties with regard to the leased premises, whether expressed or implied, unless specifically provided for herein included but not limited to any warranties that the premises is fit for the permitted use and/or any other purpose.

18 MAINTENANCE AND REPAIRS

18.1 The **TENANT** shall be responsible for and shall pay all costs of the maintenance and repair of the whole of the leased premises including but not limited to the maintenance of the exterior of the building, as if it were the owner of the leased premises and shall on the termination date deliver the leased premises to the **LANDLORD** in the same good order and condition as received, fair wear and tear only excepted.

18.2 The **LANDLORD** shall be responsible for structural repairs of the building as a result of structural defect.

18.3 Should the **TENANT** fail to comply, within seven days of being so advised, with any of its obligations in terms of clause 18.1 the **LANDLORD** shall be entitled to effect the necessary maintenance and/or repairs and to claim the cost thereof from the **TENANT**, which shall be payable forthwith on demand.

18.4 Without limitation by inference from any other provision contained in this agreement, the Parties record that this is a not a triple nett lease. That the **TENANT** shall be responsible for and shall pay all costs and charges relating to the maintenance, use and occupation of the property and building as if it were the owner thereof, none of which shall be payable by the **LANDLORD**. The **TENANT** waives therefore, all claims against the **LANDLORD** in relation to the maintenance and repair (including running costs of whatever nature) of the property and / or building. The **TENANT** indemnifies the **LANDLORD** and holds the **LANDLORD** harmless against all claims, costs and charges contemplated herein.

18.5 The **TENANT** shall be responsible for and shall pay all costs of the internal maintenance and all reasonable preventative maintenance costs of whatever nature as if it were the owner of the leased premises and shall on the termination date deliver the leased premises to the landlord in the same good order and condition as in which received, fair wear and tear excepted.

18.6 The **TENANT** shall be responsible for payment of the operating costs, which shall not include the costs of maintaining the structural integrity of the leased premises, such costs to be for the account of the **LANDLORD**. However, in the event of damage being occasioned to the structural integrity of the leased premises as a consequence of an act or omission on the part of the Tenant, the costs incurred in order to repair the damage occasioned by the Tenant shall be for the account of the Tenant.

18.7 The **LANDLORD** shall be responsible for maintaining the structural integrity of the premises and for repairing or replacing such portions or elements of the premises which have become unfit

INITIAL: **LANDLORD**: _____ WITNESS 1: _____ WITNESS 2: _____

INITIAL: **TENANT**: _____ WITNESS 1: _____ WITNESS 2: _____

for their originally intended purpose as a result of fair wear and tear or which have experienced structural defects. Repairs required to maintain the structural integrity of the premises which have been caused as a result of the **TENANT's** activities in the premises will be the **TENANT's** responsibility.

19 INSURANCE

19.1 The **LANDLORD** shall at all times

19.1.1 keep the leased premises insured for a sum not less than the full replacement value thereof against loss through fire, wind, storm, hail, riot, strike, civil commotion, explosion, earthquake and any other risks which the **LANDLORD** may from time to time reasonably require; and

19.1.2 maintain adequate public liability insurance having regard to the requirements of every law and the relevant risks to which the **TENANT** may be subjected

19.2 The obligation on the **LANDLORD** to insure the building, in terms of this clause, shall not impose any obligation upon it to insure the contents of the building, without limitation, equipment records, stock, loss of profits or any consequential damage.

19.3 The **TENANT** accordingly waives its rights, as against the **LANDLORD**, to claim for any loss, direct or consequential that it may suffer to its property that may arise out of any insurable event that the premises may sustain and hereby indemnifies the **LANDLORD** against any claim that may be brought by any other party employed on the premises or occupying it at the instance of the **TENANT**.

19.4 In the event of any increase in the cost of insurance, such increase shall be borne by the **TENANT**.

20 INDUSTRIAL DEVELOPMENT ZONE RULES

20.1 The property is located within an industrial development zone which falls under the control of the **LANDLORD**.

20.2 The **LANDLORD** shall be entitled at its discretion to make or specify such rules, conditions, regulations, permit requirements and/or other restrictions (rules) relating to the use, occupation, entry and egress of the staff, contractors and invitees, improvement or otherwise of premises within such zone and/or conduct generally within such zone, provided that such rules shall be reasonable and shall apply equally to all persons (or persons of a particular class) occupying premises within or otherwise entering upon such zone.

20.3 The **TENANT** acknowledges that its rights and obligations *vis a vis* its operation as an industrial development zone enterprise within a zone of the industrial development zone will be

INITIAL: **LANDLORD**: _____ WITNESS 1: _____ WITNESS 2: _____

INITIAL: **TENANT**: _____ WITNESS 1: _____ WITNESS 2: _____

governed by the Manufacturing Development Act, 1993, as amended and the regulations framed from time to time in terms of section 10 (1) thereof (referred to herein as the "laws and regulations"). It accordingly agrees that it has familiarised itself with the rights and obligations arising from the laws and regulations *vis a vis* its tenancy that it will be bound by them.

21 ENTERPRISE PERMIT

21.1 The Lessee undertakes to adhere to the terms of the Enterprise Agreement entered into with the Lessor.

21.2 In the event that the Lessee fails to adhere to the terms of the Enterprise Agreement by failing to submit the necessary information and/or the information submitted does not demonstrate compliance with its undertakings, the Lessor shall be entitled to:

21.2.1 Suspend and/or withdraw any or all incentives afforded the Lessee until such time as the breach has been remedied; and

21.2.2 Should the Lessee fail to remedy the breach within 20 (twenty) business days, the Lessor shall be entitled to terminate the Lease Agreement without further notice and reclaim the said property.

22 LIMITATION OF LIABILITY

22.1 Save as may be caused by intentional misconduct, bad faith or gross negligence on the part of the **LANDLORD**, its agents, employees or any other person for whom the **LANDLORD** may be vicariously liable at law;

22.1.1 neither the **LANDLORD** nor any of the **LANDLORD's** representatives shall be liable to the **TENANT** for any loss or damage (whether to person or property) which may be suffered by the **TENANT** and/or any of the **TENANT's** employees or invitees on or about the leased premises; and

22.1.2 the **TENANT** hereby indemnifies the **LANDLORD** including the **LANDLORD's** representatives and holds the **LANDLORD** including its agents and employees harmless in respect of all claims which may be brought or threatened against the **LANDLORD** and/or any of the **LANDLORD's** representative by the **TENANT** and/or any of its employees or invitees in respect of any loss suffered by them on or about the leased premises.

22.2 The **TENANT** indemnifies the **LANDLORD** and holds the **LANDLORD** harmless against all claims of whatever nature that may be brought or threatened against the **LANDLORD** by any third party arising from anything done or omitted to be done on the property by the **TENANT** and/or its agents, contractors, employees representatives or invitees of whatever nature;

INITIAL: **LANDLORD**: _____

WITNESS 1: _____

WITNESS 2: _____

INITIAL: **TENANT**: _____

WITNESS 1: _____

WITNESS 2: _____

22.3 The **TENANT** shall not be entitled to any claim for the cancellation of this agreement and/or for damages and/or for the remission of rental or to withhold the payment of any rentals by reason of the building and/or the leased premises falling into a state of disrepair and/or by reason of any interruption of any services (including but not limited to the generality of the foregoing, the supply of electricity and/or air-conditioning) to the leased premises.

23 BREACH AND CANCELLATION

23.1 The **LANDLORD** shall be entitled, but not obliged and notwithstanding any previous waiver or anything to the contrary herein contained to cancel this agreement forthwith and retake possession of the leased premises, without prejudice to its claims for any arrear rental or other sums payable hereunder or for any damages which it may suffer by reason of such breach and/or cancellation or any other rights which it may have in terms hereof or at law in the following instances if;

23.1.1 any rental or other amount payable by the **TENANT** to the **LANDLORD** in terms of this agreement is not paid promptly on due date for payment thereof and remains unpaid for a period of 3 (three) business days after receipt by the **TENANT** of written notice calling upon it to effect payment;

23.1.2 the **TENANT** fails to remedy any other breach of this agreement within 5 (five) business days after receipt by the **TENANT** of written notice calling upon it to remedy the breach in question; or

23.1.3 a resolution for the voluntary liquidation of the **TENANT** is adopted; or

23.1.4 security is given by any person to the Master of the High Court for any application in which the liquidation of the **TENANT**, whether provisional or final, have been granted; or

23.1.5 any final judgment (being a judgment in respect of which all available steps of appeal or review or rescission have been exhausted) is entered against the **TENANT** and the **TENANT** fails within 5 (five) business days after becoming aware of such judgment to satisfy the same; or

23.1.6 the **TENANT** commits an act which, if committed by an individual, would constitute an act of insolvency within the meaning of Section 8 of the Insolvency Act 24 of 1939, as amended; or

23.1.7 any of the events contemplated in 23.1.3, 23.1.4, 23.1.5, and 23.1.6, and occur in relation to any person who has bound himself to the **LANDLORD** as surety or guarantor or who has otherwise provided security to the **LANDLORD** for the obligations of the **TENANT** arising out of this agreement; or

23.1.8 any guarantee, indemnity or similar undertaking or other security given to the **LANDLORD** for

INITIAL: **LANDLORD**: _____ WITNESS 1: _____ WITNESS 2: _____

INITIAL: **TENANT**: _____ WITNESS 1: _____ WITNESS 2: _____

the obligations of the **TENANTs** arising out this agreement is or becomes invalid, illegal or unenforceable for any reason whatsoever and is not within a period of 14 (fourteen) days after written demand by the **LANDLORD** replaced by a similar guarantee, indemnity, undertaking or other security of at least the same security value and which is reasonably acceptable to the **LANDLORD**;

23.2 If the **TENANT** permits any person to commit or if any person under the **TENANT's** control commits any act which if committed by the **TENANT** would constitute a breach of any of the provisions of this agreement, then such act shall be deemed to have been committed by the **TENANT**.

23.3 If either party commits a breach of any of the provisions of this agreement the other party shall not be entitled to cancel this agreement but shall, be entitled to claim specific performance and/or damages.

24 VACATION OF LEASED PREMISES

24.1 Upon the termination of this agreement the **TENANT** shall vacate the leased premises and leave same in the same good order and condition as in which received, fair wear and tear only excepted.

24.2 Should the **TENANT** fail to comply with the provisions of 24.1, the **LANDLORD** may cause the leased premises to be reinstated and to recover the cost thereof from the **TENANT** which shall be payable forthwith on demand.

25 DAMAGE OR DESTRUCTION

1.1. If during the currency of this agreement the leased premises are damaged or destroyed:

1.1.1. this agreement shall not terminate; and

1.1.2. the **TENANT** shall pay all the rentals in full until a pro-rata rental is calculated having regard to the use and enjoyment of the building and as determined by an independent expert nominated by the **LANDLORD**;

1.1.3. the buildings shall be repaired or rebuilt or replaced by the **LANDLORD** with all due diligence and as expeditiously as reasonably possible in the circumstances.

26 DISPUTE RESOLUTION

26.1 If any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly, or any alleged breach and / or repudiation thereof, its interpretation, application and /or termination, shall be resolved in accordance with the provisions of this clause.

INITIAL: **LANDLORD**: _____ WITNESS 1: _____ WITNESS 2: _____

INITIAL: **TENANT**: _____ WITNESS 1: _____ WITNESS 2: _____

- 26.2 A dispute shall arise if the dispute and particularity thereof is communicated by one party to the other in writing ("the dispute notice"), by such parties' representative to the representative of the other Party. The Parties' respective representatives shall meet as soon as possible thereafter and shall use their *bona fide* endeavours to resolve the dispute in an expeditious and amicable manner.
- 26.3 The Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration. The reference to negotiation and mediation is a pre-condition to the parties having the dispute resolved by arbitration.
- 26.4 Within twenty-one (21) days of the dispute arising, the parties shall seek an amicable resolution to such dispute by referring such dispute to representatives of each of the Parties concerned for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.
- 26.5 In the event of the parties' representatives failing to resolve the dispute within seven (7) days after delivery of the dispute notice, either party may refer the dispute in writing to a special committee comprising the Parties' respective Chief Executive Officers, or their duly appointed representatives, who shall then use their *bona fide* best endeavours to resolve the dispute.
- 26.6 In the event of the negotiation envisaged in 26.3 failing for whatsoever reason or clause, the parties must within twenty one (21) days of such failure refer the dispute for resolution by way of mediation in accordance with the then current rules of the Institute of Directors in Southern Africa. The negotiation shall inter alia, be deemed to have failed if one of the Parties declares in writing that it has failed.
- 26.7 In the event of the mediation envisaged in 26.3 failing in terms of the rules of the Institute Of Directors the matter must within twenty one (21) days thereafter be referred to arbitration as envisaged in clauses below.
- 26.8 The period of twenty one (21) days aforesaid for negotiation or mediation may be shortened or lengthened by written Agreement between the parties.
- 26.9 Each party agrees that the Arbitration will be held as an expected arbitration in South Africa. Such arbitration will be in accordance with the then current rules for expedited arbitration of the Arbitration Foundation in South Africa, by one arbitrator, appointed by Agreement between the Parties. If the parties cannot agree on the arbitrator within a period of 10 days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the secretariat of the Arbitration Foundation of South Africa.
- 26.10 Nothing contained in this clause shall preclude either Party from seeking interim relief from any competent court having jurisdiction, pending the institution of any mediation or arbitration proceedings in terms of this clause.

INITIAL: **LANDLORD:** _____ WITNESS 1: _____ WITNESS 2: _____

INITIAL: **TENANT:** _____ WITNESS 1: _____ WITNESS 2: _____

26.11 The provisions of this clause shall survive the termination for whatever reasons of this Agreement.

26.12 If the dispute continues to mediation or arbitration and where the dispute is of the following nature the following experts would be used a(n):

26.12.1 accounting nature, it shall be referred to an accountant;

26.12.2 engineering nature, it shall be referred to a professional engineer;

26.12.3 legal nature, it shall be referred to practising attorney / advocate;

26.12.4 difference as to the correct measurement of buildings, a quantity surveyor;

26.13 Discipline falling beyond the above, a person appropriately qualified, and the experts herein shall in either and all events be independent and shall have at least fifteen (15) years of professional experience.

26.14 If no agreement can be achieved as to an appropriate person for mediation, this shall be determined by the chairman, for the time being, of the East London Attorney's Association.

26.15 Unless otherwise agreed, the party appointed to determine the dispute during mediation shall act as an expert, rather than an arbitrator, shall conduct proceedings in an informal manner and procedure with a view to resolving its expeditiously as the circumstances permit with due adherence to a fair procedure and to a just solution.

26.16 The decision of the expert during mediation or arbitration shall be final and binding and capable of being made an order of court in accordance with the provisions of the Arbitration Act.

26.17 The person appointed to determine the dispute shall, in his discretion be permitted to determine the disputes between the parties; determine whether to permit the parties to be represented by attorneys and / or advocates; determine the procedure; determine the amount that should be deposited as security for his expenses prior to the commencement of proceedings and make an order as to costs, if any, including the applicable tariff.

26.18 The provisions of this Clause shall constitute and irrevocable consent, on the part of the parties, to the resolution of this dispute in the manner provided for herein.

27 SUB-LETTING, CESSION AND ASSIGNMENT

27.1 The **TENANT** may not sub-let the leased premises or any part thereof for any purposes including the purpose of the use and enjoyment thereof or allow a third party to occupy the premises for gratuitous occupation, without the prior written consent of the **LANDLORD**.

INITIAL: **LANDLORD**: _____

WITNESS 1: _____

WITNESS 2: _____

INITIAL: **TENANT**: _____

WITNESS 1: _____

WITNESS 2: _____

- 27.2 The **TENANT** may not cede, assign or delegate any of its rights and/or obligations in terms of this agreement to any third party without the prior written consent of the **LANDLORD**.
- 27.3 If the **TENANT** sub-lets the leased premises to any third party, the **TENANT** shall be and remain bound by the provisions of this agreement.
- 27.4 The **LANDLORD** shall be entitled to cede all or any of its rights in terms of this agreement to one or more third parties notwithstanding that such cession may result in or constitute a splitting of claims and the **TENANT** consents to such splitting of claims.
- 27.5 Any consent required by the **TENANT** from the **LANDLORD** in terms of this agreement:
- 27.5.1 may be reasonably withheld; and
- 27.5.2 shall be validly given only if reduced to writing and signed by the **LANDLORD**;
- 27.5.3 may be conditional on the consent of and/or any conditions imposed by the **LANDLORD**.
- 27.6 In terms of legislation, no person may undertake a business undertaking in the Industrial Development Zone without an ELIDZ Operator/ **LANDLORDS** permission.
- 27.7 Accordingly, the **TENANT** is specifically cautioned against offering or holding out for lease or sale, the leased premises without making it clearly understood to the interested third party that, in the event of their taking occupation, they shall not be permitted to commence business until such time as the **LANDLORD'S** consent has been granted to them to undertake the business in question.
- 27.8 Accordingly, the **LANDLORD** will not hold itself responsible for the claims of any third party arising out of their having been prevented or delayed in the commencement of their work by reason of their not having had issued such permission, and the **TENANT** shall indemnify the **LANDLORD** to that extent.
- 27.9 Prior to the granting of the permission, the party seeking the permission will be required to bind himself to an agreement and the supporting documents.
- 27.10 Until such time as the **LANDLORD** is satisfied that any intended successor in title or intended lessee has obtained the necessary permission, and such party has contractually bound himself to comply with this Zone Rules; and in respect of sales transactions, **TENANT** has bound its intended successor in title / sub-**TENANT** to such terms as imposed by the **LANDLORD**.
- 27.11 The **LANDLORD** shall be entitled to withhold the granting of any permission to sublet.

28 RIGHT OF FIRST REFUSAL FOR SALE OR LEASE

- 28.1 The **LANDLORD** shall, for the duration of the agreement, grant to the **TENANT** a right of first refusal to purchase the property.

INITIAL: **LANDLORD**: _____ WITNESS 1: _____ WITNESS 2: _____

INITIAL: **TENANT**: _____ WITNESS 1: _____ WITNESS 2: _____

28.2 Accordingly, in the event of the **LANDLORD** resolving to offer the property for sale or lease, it shall before offering the property to a third party (for sale or lease), extend the offer to the **TENANT** affording the **TENANT**, six weeks to conclude an agreement from the time of the landlord extends the offer, to accept the offer before the six weeks lapses.

28.3 Should the **TENANT** not take up the offer within the six weeks and should the **LANDLORD** receive any other offer, after the expiry of the six weeks, which it may be disposed to accept, during the existence of the lease, then and in that event the **LANDLORD** shall disclose the substance of the offer to the **TENANT**, being the price, the date of performance and any other terms with the material bearing on the rights and obligations of the parties, and afford the tenant fourteen (14) days to accept the offer. If the **TENANT** does not accept the offer or if the (fourteen) 14 days lapses the **LANDLORD** may accept the offer from the third party at the same terms and conditions as was offered to the **TENANT**.

28.4 Should the **LANDLORD** decide not to sell the property, this shall in no respect diminish or extinguish the rights of the tenant who shall enjoy the right of first refusal for the full duration of the lease and any extension thereof.

29 CONFIDENTIALITY

29.1 **LANDLORD** and **TENANT** agree that this agreement will remain confidential and shall not be disclosed by the **LANDLORD** or the **TENANT** to any other party without the express and written permission of the other party to this agreement

30 DOMICILIUM ET CITANDI

30.1 The parties choose domicilium citandi et executandi ("domicilium") for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows:

30.1.1 The **LANDLORD**

Physical	Lower Chester Road
	Sunnyridge
	East London
	5201
Facsimile	(043) 736-6405

30.1.2 The **TENANT**

PHYSICAL	the leased premises and / or

INITIAL: **LANDLORD**: _____

WITNESS 1: _____

WITNESS 2: _____

INITIAL: **TENANT**: _____

WITNESS 1: _____

WITNESS 2: _____

Facsimile

30.2 Either party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicile to any other physical address (not being a post office box or poste restante) within the Republic of South Africa, to vary its domicile to any other postal address within the Republic of South Africa and to vary its facsimile domicile to any other facsimile number.

30.3 Any notice given or payment made by either party to the other ("addressee") which is

30.3.1 delivered by hand between the hours of 09:00 and 16:00 on any business day to the addressee's domicile for the time being shall be deemed to have been received by the addressee at the time of delivery;

30.3.2 posted by prepaid registered post to the addressee's domicile for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the fourteenth day after the date of posting.

30.3.3 Any notice given by either party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicile for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof;

30.3.4 The above shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause.

30.3.5 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

31 GENERAL

31.1 This agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. Neither party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.

31.2 No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.

31.3 No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the

INITIAL: **LANDLORD:** _____ WITNESS 1: _____ WITNESS 2: _____

INITIAL: **TENANT:** _____ WITNESS 1: _____ WITNESS 2: _____

grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

- 31.4 Without prejudice to any other provision of this agreement, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee, of either party shall be bound by this agreement.
- 31.5 The signature by either party of a counterpart of this agreement shall be as effective as if that party had signed the same document as the other party.
- 31.6 Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the signature date, and as amended or substituted from time to time.
- 31.7 If any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this agreement.
- 31.8 Where any term is defined within a particular clause other than this one, that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement.
- 31.9 Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a business day, the last day shall be deemed to be the next succeeding day which is a business day.
- 31.10 Any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be.
- 31.11 Any term which refers to a South African legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this agreement may apply or to the laws of which a party may be or become subject.
- 31.12 The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 31.13 The terms of this agreement having been negotiated, the *contra proferentem* rule shall not be applied in the interpretation of this agreement.
- 31.14 This agreement shall become binding on the **LANDLORD** only when signed by or on behalf of both the **TENANT** and the **LANDLORD**, until which time the **TENANT** shall have no right of occupation of the leased premises and shall have no claim to the existence of any tenancy (whether written, verbal, by conduct or otherwise howsoever) as a result of:

INITIAL: **LANDLORD**: _____

WITNESS 1: _____

WITNESS 2: _____

INITIAL: **TENANT**: _____

WITNESS 1: _____

WITNESS 2: _____

- 31.14.1 negotiations having been conducted or concluded;
- 31.14.2 this agreement having been drafted by or on behalf of the **LANDLORD** and submitted to the **TENANT** for signature;
- 31.14.3 this agreement having been signed by the **TENANT** only;
- 31.14.4 the acceptance by the **LANDLORD** or its representatives of any rental or other amount payable in terms of this agreement; and/or
- 31.14.5 the **TENANT** having been allowed to take possession and/or occupation of the leased premises;
- 31.15 Any consent required by the **TENANT** from the **LANDLORD** in terms of this agreement
- 31.15.1 shall be validly given only if reduced to writing and signed by the **LANDLORD**
- 31.15.2 may be conditional on the consent of and/or any conditions imposed by the **LANDLORD**.
- 31.16 The onus is on the **TENANT** to advise the **LANDLORD** should there be any changes in directorship / shareholding and / ownership as the case may be applicable in the circumstances.
- 31.17 **(OPTIONAL CLAUSE – FOR LEASES LONGER THAN 5 YEARS INITIAL PERIOD)** The parties shall review the agreed rental and escalation in this agreement six (6) months before the end of the _____ year of this agreement. The period six months shall be the review period. The determination of market rental clause shall apply in this respect.

THUS DONE AND SIGNED BY **EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD.** on the ____ day of _____ 20__ in the presence of the undersigned witnesses:

For and on behalf of **EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD**

NAME OF SIGNATORY: _____,

DESIGNATION: _____, who warrants that he is duly authorized hereto.

AS WITNESSES:

1. _____ 2. _____

THUS DONE AND SIGNED BY **NAME OF COMPANY (PTY) LTD** on the ____ day of _____ 200__ in the presence of the undersigned witnesses:

INITIAL: **LANDLORD:** _____

WITNESS 1: _____

WITNESS 2: _____

INITIAL: **TENANT:** _____

WITNESS 1: _____

WITNESS 2: _____

For and on behalf of **NAME OF COMPANY (PTY) LTD**

NAME OF SIGNATORY: _____,

DESIGNATION: _____, who warrants that he is duly
authorized hereto

AS WITNESSES:

1. _____ 2. _____

INITIAL: **LANDLORD:** _____

WITNESS 1: _____

WITNESS 2: _____

INITIAL: **TENANT:** _____

WITNESS 1: _____

WITNESS 2: _____