

the removed Storage and Dispensing Equipment, then and in such circumstances, the Lessee shall be responsible for the cost of hiring the Storage and Dispensing Equipment being lent. The Lessee shall not be liable for the cost of hiring Storage and Dispensing Equipment to replace any Storage and Dispensing Equipment that has been removed by the Lessor for the purposes of routine maintenance.

- 15.9 Without derogating from the generality or specificity of the right of the Lessor to access and/or inspect the Storage and Dispensing Equipment in terms of this clause 15, and without imposing any obligation upon the Lessor in the exercise of its rights of access and/or inspection, the Lessor shall endeavour to exercise such rights in such manner as will cause as little interference as possible to the Lessee's business, provided, however, that the provisions of clause 15.17 shall be of full application in all its terms in respect of the rights of access granted herein.
- 15.10 Without derogating from the generality or specificity of any of the indemnification by the Lessor of the Lessee under any other provision of this Lease, the Lessee, to the extent allowed by Law, hereby indemnifies the Lessor against any claim or Loss or damage suffered by the Lessor directly or indirectly or as a consequence of any third party claiming for Loss or damage suffered by the third party and resulting in a claim against the Lessor, of any nature flowing from or connected with the Storage and Dispensing Equipment, including, without limitation, any defect or malfunctioning thereof.
- 15.11 To the extent that there is any third party claim arising for Loss or damage flowing from or connected with the Storage and Dispensing Equipment, the Lessee shall immediately upon receipt of notification of such claim advise the Lessor in writing thereof.
- 15.12 The Storage and Dispensing Equipment shall at all times during the currency of the Lease be and remain the property of the Lessor. The Lessee hereby undertakes to inform any purchaser of the Leased Premises, the Lessee's business or any trustee, liquidator, sheriff or messenger of the Court, of the Lessor's ownership of the Storage and Dispensing Equipment.
- 15.13 The Lessor shall at all times have the right to remove the Storage and Dispensing Equipment from the Leased Premises upon termination of this Lease for whatever reason, or at any time when, in the Lessor's absolute discretion, removal is warranted as a result of considerations of safety, insufficient use thereof by the Lessee, or the Storage and Dispensing Equipment not, in the opinion of the Lessor, being reasonably required by the Lessee in relation to the scale of purchases of the Petroleum Fuels stored therein.
- 15.14 The Lessor will provide guidance and technical advice to the Lessee in regard to control measures and inspection in terms of clause 15.2(a), free of charge on written request by the Lessee.
- 15.15 The loan of the Storage and Dispensing Equipment shall terminate automatically upon the termination or expiry, as the case may be, of the Lease. The Lessee shall not at any time be entitled to remove or relocate the Storage and Dispensing Equipment without the Lessor's prior written consent first having been obtained and subject to such conditions as the Lessor in its discretion may impose.
- 15.16 The Lessor shall be entitled to terminate the loan of the Storage and Dispensing Equipment to the Lessee forthwith on written notice to the Lessee should the Lessee be in breach of any of the terms of this Lease, especially and without limitation, this clause 15. Upon termination of the loan for any reason whatsoever, the Lessor shall be entitled to enter upon the Leased Premises and to remove the Storage and Dispensing Equipment from the Lessee's possession without prejudice to any claim which the Lessor may have against the Lessee arising from such breach.

- 15.17 The nature, number and position of items or any part or the whole of such Storage and Dispensing Equipment upon the Leased Premises shall be entirely within the discretion of the Lessor and the Lessor retains the right to relocate or remove items or any part of the whole of such Storage and Dispensing Equipment at any time should the Lessor deem this necessary.

16. ALTERATIONS TO PREMISES

- 16.1 The Lessee shall not make any alterations, additions or changes of any nature to the Buildings, nor shall the Lessee be permitted to make or allow any alterations, additions or changes of any nature to the paintwork, signwriting or decoration of the exterior and/or interior of the Leased Premises, nor to effect or allow any paintwork, signwriting or decoration of the exterior and/or interior of the Leased Premises to be effected, unless the Lessor shall have given its prior written consent thereto. Notwithstanding the Lessor's consent, the Lessee shall not at any time have any claim of any nature whatsoever against the Lessor for improvements effected to the Leased Premises or the Buildings. It is recorded that if the Lessor is subject to a Head Lease in respect of the Leased Premises, the Lessor will not be obliged to consent to any alterations without the head lessor's consent and the Lessee shall make no alterations or improvements without the head lessor's written consent.
- 16.2 Should the Lessee make or allow to be made any alterations, additions or changes to the Buildings, or to the paintwork, signwriting or decoration of the Leased Premises in contravention of the provisions of clause 16.1 above, then the Lessor shall be entitled to enter the Leased Premises and to restore same to the condition in which they were prior to such alterations and additions or changes being made or allowed to be made. The amount of any costs incurred by the Lessor in this regard shall be borne by the Lessee and shall be due and payable to the Lessor on demand.
- 16.3 The Lessor shall have the right, at its own cost, to make such structural improvements, alterations and additions to the Leased Premises as it deems fit. For such purpose the Lessor shall be entitled to:
- (a) erect scaffolding, hoarding and building equipment in, at, near or in front of the Leased Premises in such a manner as may be reasonably necessary for the work being performed; and
 - (b) have all such rights of access to any portion of the Leased Premises as may be reasonably necessary for the purposes detailed in this clause 16, and
 - (c) paint, sign write and decorate the exterior of the Buildings from time to time as it may in its discretion deem advisable, and to its own colours, designs and specifications, which it may in its discretion vary from time to time.
- 16.4 The Lessee acknowledges that it could suffer inconvenience and Loss of beneficial occupation of the Leased Premises during the period of any structural improvements, alterations and/or additions.
- 16.5 The Lessee acknowledges that it may be necessary for its business operations to be partially or totally suspended during the period of the structural improvements, alterations and additions, and the Lessee hereby agrees to such suspension as and when required by the Lessor.
- 16.6 Notwithstanding the terms of clause 16.5, the Lessor shall prior to commencing any improvements, alterations and additions pursuant to clause 16.3, advise the Lessee in writing of the projected completion date thereof, and in carrying out such improvements, alterations or additions, shall

endeavour to cause as little interference as possible to the Lessee's beneficial occupation of the Leased Premises.

- 16.7 The Lessee shall in any event have no claim against the Lessor or its officers or servants or agents for compensation, damages or otherwise, resulting from the said inconvenience or Loss of beneficial occupation by reason of the exercise by the Lessor of its rights as detailed herein. In particular, the Lessee shall not:

- (a) have any right to cancel the Lease;
- (b) be entitled to any remission of rent;
- (c) be entitled to any compensation or damages (including consequential damages) in respect of any Loss or damage which the Lessee may suffer as a result of the Loss of business, damage to property or improvements thereon, arising from the Lawful exercise by the Lessor of its rights as contained in clause 16.3, provided that the Lessor may, at its sole discretion, elect to pay such compensation.

17. FIXTURES AND FITTINGS

The Lessee shall be entitled from time to time to affix to the Leased Premises such fixtures and fittings as may be required or necessary for the carrying on of the Business, but which shall:

- 17.1 have the Lessor's prior written approval;
- 17.2 be removed by the Lessee at its own cost upon the expiration or earlier termination of the Lease, provided that any damage caused to the Leased Premises as a result of any such removal shall be made good by the Lessee at its cost, provided further that the Lessee shall not be entitled to compensation in respect of improvements to the Leased Premises should the Lessee elect to leave fixtures and fittings at the Leased Premises, and the Lessor approves such election.

18. ADVERTISING, SIGNS AND SALES PROMOTION

- 18.1 The Lessee shall display free of charge to the Lessor all such advertisements and/or advertising media of the Lessor's Products on such portions of the Leased Premises as the Lessor may from time to time in its discretion decide upon. The nature, quantity and position of the advertisements and/or advertising media of the Lessor's Products shall be at the discretion of the Lessor, more particularly, the Lessor shall be entitled from time to time, at its own cost, to affix and/or to paint such advertisements and advertising signs to or on the exterior and/or interior of the Leased Premises and/or to do such decorative work to the Leased Premises as the Lessor may deem fit, and to remove such advertisements and advertising signs at the Lessor's own expense.
- 18.2 Save as provided in clause 18.1, the Lessee shall not be entitled to affix, paint, place, erect, install or display any advertising or other signs on the windows, doors, exterior or any other portion of the Leased Premises or the Buildings, without the Lessor's prior written consent.
- 18.3 The Lessee shall not be entitled to make use of any trademarks or logos of the Lessor in any of its advertising or other signs on the Leased Premises or stationery or otherwise, without the prior written consent of the Lessor. In the event of such consent being granted, then the Lessee shall be obliged to ensure that the use of such trademarks and/or logos, as the case may be, complies fully with any

specifications laid down by the Lessor from time to time and at the time being. The Lessor shall be entitled to withdraw its consent to the use of its trademarks and/or logos at its entire discretion, and shall not be liable to the Lessee for any costs incurred by the Lessee in removing such trademarks and/or logos.

- 18.4 The Lessee shall and hereby agrees to participate in any and all advertising campaigns and/or sales promotions introduced by the Lessor from time to time, provided, however, that the Lessee is given reasonable notice of such promotions and campaigns and that the Lessor shall at all times give due consideration to religious, cultural and ethnic issues.

19. RATES, TAXES, WATER, ELECTRICITY & OTHER CHARGES

- 19.1 The Lessor shall be responsible for the payment of all Property and sewerage rates and any taxes levied by the local authority on the Leased Premises for the duration of the Lease period including any increases thereon levied at any time and from time to time and for which the Lessor is liable.

- 19.2 The Lessee shall be liable for all charges for water and electric current supplied to and/or consumed or used upon the Leased Premises and any other charges in respect of services including, but not limited to, the removal of domestic effluent, sewerage, refuse and storm water, which may be levied upon or assessed in respect of the Leased Premises by any competent authority.

- 19.3 If the Lessor decides to install separate meters in respect of such consumption, it shall bear the cost thereof.

20. DAMAGE AND/OR DESTRUCTION OF THE LEASED PREMISES, THE STORAGE AND DISPENSING EQUIPMENT AND THE SERVICE STATION EQUIPMENT

- 20.1 Save where as a direct or indirect consequence of any act or omission of the Lessee and/or its employees and/or agents, should the Leased Premises and/or the Buildings and/or the Storage and Dispensing Equipment and/or the Service Station Equipment be destroyed or damaged to an extent which renders the same or any part thereof untenable and/or unusable for the purpose of the Lease, the Lessor shall, subject always to its rights and obligations under the provisions of 20.4 hereof, rebuild or repair and/or replace such part thereof as may be required to be rebuilt or repaired and/or replaced with all reasonable despatch so as to restore such part to its previous condition, and the Lessee shall be freed, during the period of rebuilding and/or replacement, from the payment in respect of:

- (a) the whole rent in the event of the Buildings being destroyed entirely; or
- (b) a proportionate share of the rent to be mutually agreed upon or, failing agreement, to be settled by arbitration under the provisions of clause 38, as amended, in the event of any part of the Buildings or the Leased Premises and/or all any of the Storage and Dispensing Equipment being rendered untenable and/or unusable.

- 20.2 Such freedom of or reduction in payment of rental shall operate between the date of the incident causing the destruction in question, and a date 14 (fourteen) days after notice will have been given by the Lessor to the Lessee in writing that the Leased Premises and/or the Buildings have been repaired or rebuilt and/or the Service Station Equipment replaced, as the case may be.

- 20.3 The Lessee shall, notwithstanding how the destruction or damage to the Leased Premises or the Buildings or the Storage and Dispensing Equipment had been caused, have no claim of any nature whatsoever against the Lessor as a result thereof, and the Lease shall remain in full force and effect.
- 20.4 In the event that the Lessor considers that the Leased Premises and/or the Storage and Dispensing Equipment have been totally destroyed or if the Leased Premises and/or the Storage and Dispensing Equipment becomes totally untenable and/or unusable for the purposes of the Lease, the Lessor at its election may, by notice to the Lessee within 30 (thirty) days of such event, summarily cancel the Lease and the Lessee shall have no claim whatsoever against the Lessor in respect of such cancellation.
- 20.5 The Lessee shall immediately upon the occurrence of an Incident causing destruction or damage to the Leased Premises or the Storage and Dispensing Equipment and the Service Station Equipment, inform the Lessor in writing of the cause/s of and the extent of such destruction or damage.
- 20.6 The Lessee shall be liable for and indemnifies the Lessor against the cost of the rebuilding or repair and/or replacement of such part or the whole of the Leased Premises, the Buildings or the Storage and Dispensing Equipment and the Service Station Equipment as may have been damaged or destroyed as a consequence of an act or omission of the Lessee or any other person or persons, including, without derogating from the generality of the foregoing, its employees or agents.
21. **SUPPLY OF PRODUCTS FOR RE-SALE**
- 21.1 The Lessor undertakes to supply to the Lessee, and the Lessee undertakes to obtain exclusively from the Lessor, for the period which this Lease endures, for resale by the Lessee, all the Lessee's requirements of Petroleum Products as follows:
- (a) Petroleum Fuels, at the current market price and rates at which the Lessor sells and/or supplies businesses of the same class as that of the Lessee in the magisterial district or part thereof in which the Petroleum Products are supplied to the Lessee (subject at all times to regulation of prices in terms of governing requirements referred to in clause 5);
 - (b) Petroleum Products other than Petroleum Fuels at the Lessor's wholesale list prices, ruling at the date of delivery, for the magisterial district or part thereof in which the Petroleum Products are supplied to the Lessee;
 - (c) Irregular Product shall be deemed not to have been acquired by the Lessee for the purposes of this Lease and shall specifically be excluded in respect of any benefits to be received by the Lessee pursuant to the purchase and sale of Lessor's Products and possession, storage, sale or dealing with Irregular Product shall be and be deemed to be a material breach of this Lease by the Lessee.
- 21.2 The delivery of Petroleum Fuels purchased by the Lessee from the Lessor shall, in respect of both the minimum or maximum quantities to be delivered and the time of delivery, be at the entire discretion of the Lessor and where applicable in accordance with the relevant provisions of the Operating Procedures Manual, which deal with delivery and order generation and the Lessor's automatic stock replenishment system. The Lessee undertakes to comply with the minimum stock retention provisions as contained in the Operating Procedures Manual. Under no circumstances shall the Lessee have any claim (whether for payment of monies or otherwise) arising from or connected with any delay in or time of delivery of the Petroleum Fuels purchased by the Lessee from the Lessor.

- 21.3 The Lessee shall at all times during the period of this Lease, use only those systems, programmes and management tools as determined or required by the Lessor in terms of the Operating Procedures Manual including but not limited to, those relating to stock generation, wet stock management, ordering, scheduling and delivery of Petroleum Products.
- 21.4 The systems, programmes and management tools to be utilised in determining stock generation, wet stock management, scheduling, ordering and delivery of Petroleum Fuels which has been purchased by the Lessee from the Lessor shall be at the Lessor's discretion.
- 21.5 The Lessee shall not be entitled to use any other computer systems, whether hardware or software, without the prior written approval of the Lessor.
- 21.6 The Lessee shall at all times accept delivery of the entire volume of Petroleum Products which are being delivered by the Lessor and not a part thereof.
- 21.7 In circumstances where the Lessor's Stock Generation system is not operating, the Lessee shall be obliged to place orders for Petroleum Products from Lessor in accordance with the provisions of this Lease and the Operating Procedures Manual.
- 21.8 The Lessee shall be obliged to purchase and accept delivery of nothing less than the minimum order quantity of Petroleum Fuels as set out in the Operating Procedures Manual or which is communicated by the Lessor to the Lessee in writing from time to time, which notwithstanding anything else contained herein shall be nothing less than 50% of the capacity of the underground storage tanks situated on the Leased Premises.
- 21.9 In circumstances where:
- (a) the Lessee has placed an order for Petroleum Products with the Lessor or where the Lessor has notified the Lessee that it is scheduled to receive a delivery in terms of the Lessor's automatic tank gauging system;
 - (b) The Lessee fails to amend or cancel an order for Petroleum Fuels timeously or notify the Lessor that it does not require a delivery timeously; and
 - (c) it can be shown from the records of the Lessor's stock replenishment system that there was capacity in the Storage and Dispensing Equipment or the scheduled delivery of Petroleum Products; and
 - (d) it is proven that an attempt to deliver Petroleum Fuels to the Leased Premises was made and there was a return of such Petroleum Fuels without delivery thereof to the Lessee, because the Lessee does not accept delivery;

then and those circumstances the Lessee shall be pay the Lessor an amount which shall be calculated as follows:

$$R = S \times (T + V)$$

Where R is equivalent to the amount to be paid by the Lessee to the Lessor

Where S is equivalent to the number of litres of Petroleum Fuel for which delivery was not accepted;

Where T is equivalent to the wholesale margin on the pump price of Petrol (which is determined by the DOE and published in the Government Gazette from time to time);

Where V is equivalent to the secondary distribution costs on the pump price of Petrol as determined by the DOE and published in the Government Gazette from time to time.

- 21.10 The Lessee shall at all times ensure that it maintains a minimum level of stock of Petroleum Fuels in each of the underground storage tanks situated at the Leased Premise of not less than 50% (fifty percent) of the capacity of that storage tank.
- 21.11 Risk in and ownership of the Petroleum Fuels shall be and be deemed to have passed to the Lessee as soon as the Petroleum Fuels delivered in bulk have passed the inlet flange of the Storage and Dispensing Equipment on the Leased Premises or as soon as the Petroleum Products delivered in packed form are off-loaded at the Leased Premises, or are loaded on the Lessee's collecting vehicle, as the case may be.
- 21.12 Where value added tax is payable on the supply of any of the Petroleum Products, prices in respect of such Petroleum Products are exclusive of value added tax.
- 21.13 Unless otherwise stipulated in the Lease, the Lessee shall pay for all Petroleum Products supplied by the Lessor by depositing, transferring or permitting the transfer by the Lessor, as the case may be, of the purchase price thereof prior to or, at the Lessor's option as exercised in writing, against delivery thereof.
- 21.14 The extent, nature and duration of any credit facilities which may be granted by the Lessor to the Lessee shall at all times be in the sole discretion of the Lessor. Notwithstanding the granting of such credit facilities the Lessor may refuse to supply the Lessee with Petroleum Products except upon the prepayment by the Lessee of the purchase price in respect of such Petroleum Products in such manner and at such place as may be required by the Lessor.
22. PETROLEUM FUELS SUBSTITUTION
- 22.1 Without derogating from the Lessor's rights under clause 23 below, should:
- (a) the Lessee, having properly placed an order for Petroleum Fuels or being notified by the Lessor that it is due to receive deliveries in terms of the Lessor's automatic stock replenishment system; and
 - (b) the Lessor for a period longer than 24 (twenty four) consecutive hours at any one time be unable to supply the whole or any part of the Petroleum Fuels ordered by the Lessee, or which the Lessee is due to receive from the Lessor in terms of clause 22.3(a); and
 - (c) the Storage and Dispensing Equipment situated on the Leased Premises have become empty of such Petroleum Fuels such that the Lessee is unable to supply Petroleum Fuels to the general public; and
 - (d) the Lessee having given the Lessor notice, in writing or telephonically, calling upon the Lessor to deliver the Petroleum Fuels which have either been ordered by the Lessee, or which the Lessee is due to receive in terms of the Lessor's automatic stock replenishment system, and which have not yet been delivered, or to procure the delivery thereof within 12 (twelve) hours after the expiry of the 24 hour period referred to in clause 22.1.(b); and

(e) the Lessor having notified the Lessee that it is unable to deliver or procure delivery as aforementioned and having granted the Lessee consent to cancel the order of such undelivered Petroleum Fuels and to seek supply of such undelivered Petroleum Fuels from an alternative supplier, in terms of the remainder of this clause 22, then the Lessee shall be entitled to cancel the order for such undelivered Petroleum Fuels, and shall make arrangements with an alternative supplier to supply and deliver Petroleum Fuels to the Lessee of the type and quantities that the Lessee had ordered or was due to receive, as contemplated in clause (a), provided that such Petroleum Fuels and the manner of delivery thereof will comply with the provisions of clauses 30 and 31 including but not limited to:

- (i) the use of correct and compatible couplings for the offloading of Petroleum Fuels;
- (ii) the delivery procedures as prescribed by the Lessor; and
- (iii) any special on-site delivery procedures or processes which may exist from time to time.

22.2 The Lessor's prior consent shall be required for each instance in which the Storage and Dispensing Equipment on the Leased Premises have become empty of Petroleum Products, it being specifically recorded that it is the intention of the Parties if, the Lessee, in terms of this clause 22 is allowed to purchase Petroleum Fuels from an alternate supplier and the Storage and Dispensing Equipment on the Leased Premises become empty thereafter, the Lessee will have to follow the procedure set out in this clause 22 before it can proceed. It is also recorded that the Lessee's rights in terms of this clause 22 shall only be only exercisable if and when the underground tanks have become empty of Petroleum Products and the Lessee is unable to sell Petroleum Fuel to the general public.

22.3 From the point in time when the Lessor will have given the Lessee permission to seek an alternative supplier, all risk relating to the purchase and sale of Petroleum Fuels from such alternative supplier-

- (a) the Lessor shall not be responsible for any damage, Loss, additional cost or event associated with or arising from the supply of such alternative Petroleum Fuels, such alternative supplier and/or its related activities;
- (b) Without derogating from the generality of clause (a), all undertakings given by the Lessor either to the Lessee or to members of the public or any warranties or guarantees given or implied in respect of any Petroleum Fuels normally or hitherto supplied by the Lessor will be suspended and of no force or effect until:
 - (i) After the resumption of supplies by the Lessor to the Lessee and 2 (two) deliveries of Petroleum Fuels by the Lessor to the Lessee have taken place; and
 - (ii) until the Lessor in its sole and absolute discretion, in writing, confirms that Petroleum Fuels of a standard acceptable to the Lessor, are being dispensed from the Lessee's storage and dispensing equipment.
- (c) The Lessee shall until resumption of supply and confirmation by the Lessor, display notices in such manner as is necessary and/or required by the Lessor to notify all people on or about the Leased Premises that the Petroleum Fuels therein is not that of the Lessor and that the Lessor offers no warranties or guarantees in connection therewith.

- 22.4 Until resumption of supplies by the Lessor under the circumstances contemplated in this clause 22, the provisions of clause 24.1(a) and 24.1(b) shall be suspended so as to allow the sale of alternative Petroleum Fuels for the periods contemplated in this clause.
- 22.5 Without derogating from the generality or specificity of any of the indemnification by the Lessor of the Lessee under any other provision of this Lease, the Lessee, to the extent allowed by Law, hereby indemnifies the Lessor against any claim or Loss or damage suffered by the Lessor, whether directly or indirectly or as a consequence of any third party claiming for Loss or damage suffered by the third party and resulting in a claim against the Lessor, of any nature flowing from or connected with the Lessee purchasing Petroleum Fuels from an alternative supplier and selling such Petroleum Fuels to the general public as contemplated in this clause 22.
- 22.6 Without in any way derogating from the rights of the Lessor in terms of this Lease and in Law, in the event that that the Lessor consents to the Lessee purchasing its requirements of Petroleum Products as contemplated above, the Lessee shall pay to the Lessor a fee for the usage of its Storage and Dispensing Equipment which shall be calculated as follows:

$$F = G \times H$$

where "F" is the fee payable by the Lessee;

where "G" is the number of litres of Petroleum Fuels purchased by the Lessee from a third party, as calculated by Lessor in terms of its own purchase and sales records and Automatic Stock Replenishment System;

where "H" is equivalent to the Investor Margin.

23. INABILITY TO SUPPLY

- 23.1 If for any reason beyond the Lessor's control or any cause arising from or due to strikes, lockouts, boycott, fire, flood, Act of God, war, storm, shipwrecks, government restrictions, burst and/or defective pipelines, defective machinery or from any other cause whatsoever and howsoever arising, save only the wilful default of the Lessor, the Lessor is unable to supply the Lessee's requirements of Petroleum Products, whether in full or in part; and while the Lessor shall make reasonable endeavours to procure such Petroleum Products for delivery to the Lessee, there shall be no obligation on the Lessor to take any extraordinary measures to procure such Petroleum Products for the Lessee (in this regard, any measure which has the effect of reducing the Lessor's profit margin on the sale of products to the Lessee shall be regarded as an extraordinary measure),

THEN -

- 23.2 without in any way derogating from the specific provisions of clause 22 above (and even if the Lessee will have given the Lessor notice provided for in 22.1(d)) and in the circumstances provided for in clause 23.1 above where the Lessor's inability to supply extends beyond a continuous period of 90 (ninety) days, the following shall apply:

A

- (a) Either party shall be entitled, on giving 30 (thirty) days' notice of cancellation to the other, to terminate this Lease, provided that the termination shall not release the Lessee from any indebtedness or obligation incurred prior to such termination.

- (b) Such termination shall be subject to the Lessor's legal obligations occurring upon termination of this Lease;

OR

B

- (c) The Lessor shall be entitled to notify the Lessee that it may purchase any shortfall in its requirements of products from an alternative supplier and in which case, the provisions of clause 22.1(e)(i), 22.1(e)(ii), 22.1(e)(iii) and 22.2 shall apply as if specifically provided for herein.

23.3 If neither party has terminated the Lease and the provisions of clause 23.2(c) above apply, and the Lessor has notified the Lessee that it is once again able to supply the Lessee's full requirements of Petroleum Products, the Lessee shall forthwith comply with the provisions of this Lease, provided that such Petroleum Products that it has purchased from an alternative supplier may be stored and sold from the Storage and Dispensing Equipment at the Leased Premises until it is exhausted.

23.4 In the event that this Lease is cancelled in terms of this clause 23, neither party shall have the right to claim damages from the other, regardless by which of the Parties this Lease will have been cancelled.

24. LESSEE'S UNDERTAKINGS CONCERNING SUPPLY AND RE-SALE OF LESSOR'S PRODUCTS

24.1 The Lessee undertakes:

- (a) during the Lease Period, except with the prior written consent of the Lessor, not to store, handle, deal in, use, sell or distribute on or from the Leased Premises any Petroleum Products other than those supplied directly by the Lessor to the Lessee without intervention of any intermediary and in particular, without derogation from the generality of anything elsewhere contained in this Lease, not store, handle, deal in, use, sell or distribute Irregular Products;
- (b) during the Lease period not to display for sale on or about the Leased Premises the Petroleum Products of any firm or corporation or person other than the Lessor;
- (c) to keep in stock at all times upon the Leased Premises all those classes of Lubricants sold by the Lessor as the Lessor may reasonably require, and to display the same upon the Leased Premises and to promote the sales of the said Lubricants and to use exclusively the Petroleum Products of the Lessor for the lubricating, greasing, spraying and general servicing of all the Lessee's customers' motor cars and other vehicles;
- (d) to at all times adhere to the marketing policy of the Lessor and to sell the products of the Lessor at such retail prices as may be fixed from time to time by a competent authority, or failing such, may sell the products at the retail prices recommended by the Lessor, subject, insofar as may be applicable, to the provisions of the Competition Act, No. 89 of 1998, any amendments thereto or re-enactment thereof, and any notice promulgated thereunder, failing such, by usage or custom in the retail trade. Notwithstanding anything to the contrary contained in the Lease, the Lessor may suspend supplies of any or all Petroleum Products to the Lessee if, and for so long as, the Lessee sells or offers for sale any of the products of the Lessor in breach of this clause (d), or if the Lessor is of the opinion that the Lessee may so breach the clause if Petroleum Products were to be supplied to the Lessee. Notwithstanding any suspension of

supplies in terms of this sub-clause the Lessee shall without limitation remain bound by all the terms and conditions of the Lease;

- (e) to ensure that the services offered to the motoring public at the Leased Premises shall be of the highest quality, efficiency and cleanliness as may reasonably be required by the Lessor and to adhere at all times to such operating standards as may be prescribed by the Lessor in the Operating Procedures Manuals, from time to time, including, without limitation, those standards relating to the Lessee's employees being at all times dressed in the approved colour co-ordinated uniforms approved by the Lessor bearing name tags and the logos of the Lessor. The Lessee undertakes to participate in all service measurement programs implemented by the Lessor;
- (f) at all times to keep the Forecourt and all driveways, including entrances and exits, of the Leased Premises free from any obstruction, including parked vehicles, to permit unimpaired access by the public to the Storage and Dispensing Equipment or any other equipment for storage and dispensing of the products as not to detrimentally affect the sale of the Lessor's Products from the Leased Premises. The Lessee shall procure that the Petroleum Fuel Pumps pumps at the Premises are visible at all times from the surrounding areas;
- (g) to ensure that credit card, debit card, fleet management and other similar systems generally in use by the motoring public are available to customers and in order to do so, shall contract with recognised institutions or service providers who procure such facilities;
- (h) unless otherwise agreed between the Lessor and the Lessee, and subject to the provisions of any Law, to keep the Leased Premises open for the sale of Petroleum Fuels and Lubricants for 24 hours per day, 7 days a week, throughout the Lease Period. The Lessee shall keep all signage illuminated between sunset and sunrise;
- (i) ensure a readily available supply of water and air on the Forecourt for free use by all customers;
- (j) conduct the Business in all respects without any discrimination on the grounds of race, colour, creed, religion, gender, culture or sexual orientation, provided that this provision shall not prevent the Lessee from designating separate restroom or toilet facilities for males and females;
- (k) without derogating from the generality of anything else contained in this Lease, to offer to the public for sale at least such core of range products as may reasonably be prescribed by the Lessor from time to time;
- (l) prominently display the Lessee's retail licence at the premises as required in terms of the Petroleum Products Act, as amended from time to time;
- (m) not to have any direct or indirect interest in, or be associated with or conduct or operate any other business of a garage, Petrol-filling and/or Service Station, convenience shop or other franchised shop or franchised activity of any other entity that is a competitor of the Lessor, within a radius of 5km (five kilometres) of the Premises for the duration of the Lease Period and for a further period of 1 (one) Year from the date of termination of the Lease, without the express prior written consent of the Lessor, such consent not to be unreasonably withheld. In giving this undertaking the Lessee acknowledges that:

- (i) this restraint is reasonable both in time and place and further that it constitutes reasonable protection from trade competition and financial loss to which the Lessor is lawfully entitled;
- (ii) although the Lessee may be given consent by the Lessor at its discretion to operate two or more Service Stations, it should not be implied that this will be in accordance with the Lessor's then prevailing policies and/or standard terms and conditions of the relevant agreements. The Lessor accordingly reserves the right to impose such further conditions as the Lessor may deem appropriate for ensuring the protection of the Lessor's interests, by which the Lessee agrees to be bound as a condition of such consent.

24.2 Guarantees

- (a) On signature of this Lease, the Lessee shall provide to the Lessor with the following guarantee:
 - (i) a guarantee/s in favour of the Lessor as security for the payment by the Lessee for all sums of money which the Lessee may from time to time owe or be indebted to the Lessor for all purchases of Petroleum Products made by the Lessee to the Lessor from time to time ("Fuel Guarantee"). The Fuel Guarantee shall be for an amount as prescribed by the Lessor but in any event for an amount not less than the value of two full loads of the highest priced grade of Petrol. As and when there is an increase in the value of the highest priced grade of Petrol, and if so required by the Lessor, the Lessee shall provide the Lessor with a new Fuel Guarantee, for an amount equivalent to the value at the time of the request of two full loads of the highest priced grade of Petrol.
- (b) Such bank guarantee shall:
 - (i) be issued by a guarantor, reasonably acceptable to the Lessor
 - (ii) be on the Lessor's standard terms and conditions as advised to the Lessee from time to time and shall be unconditional and state that it is payable on demand; and/or be substantially in the form of the specimen bank guarantee preferred by the Lessor from time to time, a copy of which may be obtained upon written request by the Lessee;
 - (iii) be retained by the Lessor during the Lease Period or any renewal or extension thereof and until the Lessee has vacated the Leased Premises and has completely discharged all of the Lessee's obligations to the Lessor arising out of the Lease. ;
- (c) The Lessor shall be entitled to encash the bank guarantees referred to in sub-clause 24 (a) to liquidate any amounts owing by the Lessee to the Lessor without notice to the Lessee at any time. The Lessee shall be required thereupon to immediately reinstate such bank guarantee to the same amount as that of the previous guarantee or to such amount as the Lessor may in its discretion determine.
- (d) The Lessee, shall, within 14 (fourteen) days before each anniversary of the Commencement Date provide the Lessor with new Guarantee/s which shall comply with the provisions of clause 24.2(b) and which:

- (i) In the case of the Fuel Guarantee and subject to the provisions of clause 24.2(a)(i), shall be for an amount which shall be determined by Lessor but which shall not be less than the value of two full loads of the highest priced grade of Petrol increases;

24.3 The provisions of this clause 24 shall be binding on the Lessee as well as on the Dealer/s Principal of the Lessee. The Dealer/s Principal bind themselves and signify their acceptance that they shall be personally bound by these provisions by signing this Lease.

24.4 The Lessee undertakes to procure that all written communication to its customers and suppliers, including invoices and statements, are on the stationery prescribed by the Lessor.

25. TRAINING

25.1 The Lessee shall comply with all the requirements specified in the Operating Procedures Manuals in relation to training and refresher training. It is recorded that the training requirements include, without limitation -

- (a) the obligation on the part of a duly authorised representative of the Lessee acceptable to the Lessor (who shall, unless otherwise agreed in writing by the Lessor be the Key Person) to attend such training programmes as may be prescribed by the Lessor from time to time; and
- (b) the obligation on the part of the Lessee to procure that all members of staff attend training and refresher courses organised by the Lessor from time to time in respect of their respective functions, including driveway functions, customer care, health, safety, security and environmental matters.

25.2 The Lessee shall be liable for all reasonable costs in connection with the training.

25.3 The Lessee further undertakes not to permit any new member of staff to commence work prior to such member/s of staff having undergone the training prescribed by the Lessor from time to time.

25.4 The Key Person shall be required to manage the site on a full time basis and the Lessee shall procure that the Key Person be appointed as the manager of the Business, and shall further procure that the Key Person shall:

- (a) be approved by the Lessor;
- (b) devote his/her full time and attention to the Business;
- (c) represent and act on behalf of the Lessee in all day-to-day operational dealings with the Lessor. By its signature to this Lease, the Lessee grants the said Key Person the necessary authority to represent and act on behalf of the Lessee in all day-to-day operational dealings with the Lessor; and
- (d) to the extent applicable and where this Lease endures for more than a period of 5 (five) Years attend the Lessor's licence to operate training (or such other training as may be required by the Lessor) every 5 (five) Years.

25.5 The Lessee shall advise the Lessor, in writing, in each instance of its intention to replace the Key Person, of the details concerning the proposed replacement as will enable the Lessor to ascertain whether such replacement will be, in the Lessor's opinion, suitable. Failure by the Lessee to comply with the

requirements of this clause will, without derogating from any other of the provisions of this Lease, constitute a breach of the Lease.

26. ACCOUNTING AND STOCK CONTROL BY THE LESSEE

- 26.1 In accordance with the provisions of clause 21, the Lessor shall be entitled at any time during the term of this Lease to stipulate that the Lessee shall use an accounting system or point of sale system, which is compatible with the systems and requirements of the Lessor. The Lessee shall forthwith be obliged to acquire such system and to cease using any other accounting or point of sale system in the Business.
- 26.2 The Lessee shall institute and maintain a proper system of accounting and stock control and shall afford the Lessor access upon request to all relevant books, records, bank statements and stock sheets in order to facilitate the proper and efficient handling, storage and sales of the Petroleum Products of the Lessor at the Leased Premises. The Lessee undertakes to utilise for the purposes of this clause 26.1 such systems as may be stipulated by the Lessor from time to time.
- 26.3 The Lessor shall be entitled, at its own costs, to install such systems as it deems necessary to monitor the sales of the Petroleum Fuels by the Lessee from the Premises and the Lessee shall use such systems as may be prescribed by the Lessor or required by the Lessor for that purpose.
- 26.4 The Lessor shall be entitled at all times to access information on the point of sale system utilised by the Lessee via a computer modem or in such other manner as it thinks fit. On request by the Lessor, the Lessee shall facilitate the download or communication in such other format stipulated by the Lessor of such point of sale system and other information that is required by the Lessor from time to time:
- (a) via such means or technology as may be stipulated by the Lessor from time to time;
 - (b) via such service or technology provider as may be stipulated by the Lessor from time to time;
 - (c) at such times as may be stipulated by the Lessor from time to time.
- 26.5 The Lessor shall also be entitled to audit the Lessee's books, records, bank statements and stock sheets for the purposes of ascertaining from such records confirmation of the volumes of Petroleum Products purchased, stored and sold from the Leased Premises. To this end the Lessor and its representatives, including, should the Lessor so require, the Lessor's Auditors, shall be entitled to access to the Leased Premises at all reasonable times for the purpose of such inspection.
- 26.6 The Lessor shall (in addition to any other rights it may have) be entitled to recover the cost of such audit from the Lessee, including any travelling and subsistence costs of the auditor(s), calculated at standard rates for the profession (whether the Lessor's employees or otherwise).
- 26.7 The Lessor shall, subject to the provisions of clauses 15.5, 26.98 and 26.9 hereof, be responsible for Loss of Petroleum Products sustained by the Lessee resulting from the use of the Lessor's Storage and Dispensing Equipment only if:
- (a) in pursuance of the Lessee's obligation in terms of clause 26.1 hereof to maintain a system of stock control, the Lessee has taken dips and meter readings on a daily basis, or at such shorter intervals as will facilitate the establishment of the cause of any Loss of stock of Petroleum Fuels, as may be recommended by the Lessor and has kept such true records of dips and meter readings and receipts as will enable the Lessor to verify any claims submitted;

- (b) the Lessor is notified telephonically, and in writing, within 24 (twenty four) hours thereafter;
- (c) the Lessee has taken such steps, including, but not limited to, the locking of all pumps, where applicable, and of underground tank dip caps and filler caps, as are reasonably within the Lessee's power, to prevent or minimise the risk of Loss of stock of Petroleum Fuels;
- (d) the Loss is found to be due to a fault which could have been prevented by reasonable care on the part of the Lessor and of which reasonable care the Lessor is in default;
- (e) the Loss is not due to the negligent or wilful act of any person other than the Lessor, its employees or agents;
- (f) the claim is in excess of 0,5% (zero comma five per centum) of the Monthly throughput of:
 - (i) the relevant storage tank through the pump or pumps connected to it where the storage tank suffers the Loss of stock of Petroleum Fuels; or
 - (ii) each pump where a Loss is attributable to a pump.

26.8 The Lessor's liability in terms of clause 26.7 shall be limited to any amount by which the claim exceeds 0,5% (zero comma five per centum) of the Monthly throughput of:

- (a) the relevant storage tank through the pump or pumps connected to it where the storage tank suffers the Loss of stock of Petroleum Fuels; or
- (b) each pump where a Loss is attributable to a pump.

26.9 Under no circumstances will the Lessor be responsible for any Loss of Petroleum Fuels occurring prior to the period commencing more than 14 (fourteen) days before the receipt by the Lessor of the written notification referred to in clause 26.7(b) hereof.

27. LIMITATION OF LESSOR'S PRODUCT LIABILITY

In the event of:

- 27.1 any Petroleum Products supplied by the Lessor to the Lessee being delivered in a defective state, and the Lessee not being able to prevent damage or Loss through reasonable care on its part, or any defect in Petroleum Products delivered by the Lessor to the Lessee arising as a result of a defect in the Storage and Dispensing Equipment, and the Lessee having complied with the provisions of clause 15 relating to the loan of the Storage and Dispensing Equipment and 26.7 relating to stock control, then the Lessor shall be liable to:
 - (a) replace such defective Petroleum Products free of charge; and
 - (b) reimburse the Lessee the reasonable cost of repairs to motor vehicle engines or other engines necessitated as a direct result of the use of such defective Petroleum Products in such engines and for which the Lessee has been found to be liable.
- 27.2 Subject to any limitation in Law, the Lessor shall not be liable for any indirect or consequential Loss or damages suffered either by the Lessee as a result of the delivery and/or use of such defective Petroleum Products or defect in the Storage and Dispensing Equipment and all warranties, express or implied, and

any other liability for indirect or consequential Loss or damages from whatsoever cause arising are hereby expressly excluded.

- 27.3 The Lessor shall not in any event be liable for any Losses or damage referred to in 27.1(a) and 27.1(b) hereof, or any other Losses or damage of whatever nature, unless and until the Lessee delivers proof to the satisfaction of the Lessor that the Lessee had carried out such contamination checks (including, but not limited to, checks for water contamination) in the Petroleum Products as the Lessor may prescribe at such intervals as the Lessor may consider appropriate (but not less than daily).

28. PAYMENTS BY LESSEE

- 28.1 All payments to be made in terms of the Lease by the Lessee to the Lessor shall be made free of bank costs or charges at the option of the Lessor by way of electronic funds transfer or by means of the Lessor's direct debiting system, whereby payments will be made directly to the Lessor's bank by the Lessee's bank upon such dates as may be specified by the Lessor from time to time, during the Lease Period. The Lessor shall reimburse the Lessee on demand with the interest payable by the Lessee to the Lessee's bankers on any amount incorrectly debited to the Lessee's bank account as a result of negligence on the part of the Lessor.
- 28.2 Any payment to be made to the Lessor shall be made electronically, and shall be deemed to have been validly made by the Lessee and received by the Lessor only once such payment has been irreversibly transferred into such bank account as may be designated for this purpose by the Lessor from time to time.
- 28.3 Save where the Lessee has been granted credit facilities by the Lessor, the Lessor shall under no circumstances be obliged to deliver any Petroleum Products to the Lessee until payment in respect of such Petroleum Products has been made by the Lessee as contemplated above. In the event that the Lessor has agreed, in any specific instance, to accept payment of any amount by cheque, then the Lessee shall be liable for any clearance costs that may be incurred by the Lessor in respect of such cheque.
- 28.4 In no circumstances shall the Lessee be entitled to make deductions of any nature whatsoever from any monies payable by the Lessee to the Lessor in terms of the Lease, or to defer payment for any reason whatsoever.
- 28.5 A certificate under the hand of a duly authorised representative of the Lessor setting out the amount owing by the Lessee under the Lease and that such amount is due and payable by the Lessee, shall be *prima facie* proof of the amount and validity of such indebtedness for the purpose of obtaining any order of court sought in order to enforce any of the rights of the Lessor in terms of the Lease.
- 28.6 Save in respect of any amount where the Lessee will have made a specific appropriation or will have disputed a claim in writing, the Lessor shall be entitled in its sole discretion to appropriate any amounts received from the Lessee towards the payment of any cause, debt or amounts owing by the Lessee to the Lessor whatsoever.
- 29. INSURANCE**
- 29.1 The Lessee shall:
- (a) be obliged at its cost to take out and keep in force during the Lease Period a public liability insurance policy for the benefit of the Lessor and the Lessee with such insurance company as

approved by the Lessor from time to time for against claims for bodily injury, death or Property damage occurring in, on or about the Leased Premises an amount of not less than R5 000 000,00 (five million rand). The Lessor undertakes to notify the Lessee in writing within 10 (ten) days and by telephone immediately after the Lessor receives any such claim. The written notification from the Lessor to the Lessee shall include a copy of all pleadings and/or all correspondence relating to such claim;

- (b) at its own cost and expense insure against the Loss of cash from the Leased Premises by theft;
- (c) at its expense insure and keep insured, from the Commencement Date, the interior of the Leased Premises and the fixtures and fittings on the Leased Premises, including without limitation any geysers, plate glass and bullet resistant glass situated on the Leased Premises, against any peril included under a standard form of insurance policy for fire and allied perils for not less than 100% (one hundred percent) of their market value; and
- (d) at its own cost, sufficiently insure against any third party claim of whatsoever nature howsoever arising, including but not limited to claims for direct and indirect damages and SASRIA cover.

- 29.2 The Lessee shall at its own cost insure for the benefit of both the Lessee and the Lessor, against fire, explosion and impact risks in respect of the Storage and Dispensing Equipment and the Service Station Equipment as well as any canopy situated on the Leased Premises, according to the Lessor's policies, replacement values of which shall be provided by the Lessor upon request and on an annual basis.
- 29.3 The Lessee shall provide the Lessor with written proof that it has taken out the required covers and that the premiums in relation thereto are fully paid up at all times.
- 29.4 Should the Lessee fail to provide the Lessor with written evidence that such policies have been taken out and are fully paid from time to time, the Lessee shall, in any event, be liable in respect of Indemnification of the Lessor under and in terms of the provisions of this Lease.
- 29.5 The Lessee shall pay all premiums from time to time due in respect of the policies of insurance referred to in clauses 29.1(a), and 29.2 hereof and shall furnish the Lessor upon request from time to time with copies of the said policies of insurance and proof to the reasonable satisfaction of the Lessor that all premiums in respect thereof have been paid and that all conditions thereof have been complied with.
- 29.6 The Lessor shall be entitled but not obliged, should the Lessee fail to do so, to effect the policies of insurance referred to in clauses 29.1(a) and 29.2 hereof in the name of and on behalf of the Lessee and the Lessee shall be obliged to pay the premiums concerned to the Lessor on demand.
- 29.7 Nothing herein contained shall be construed to mean or imply that the Lessee is released from its obligations of indemnification under this Lease, but without derogating from the generality of the foregoing, in particular clauses 15.10, 20.6, 31.9, 31.10 and 31.12 44.2(a)(iii) and 44.3. The fact that any indemnity given by the Lessee, whether in terms of the Lease or otherwise, is not referred to, shall not be construed or implied to negate the effect of such indemnity.
- 29.8 The Lessor shall provide all information reasonably required by the Lessee for the purposes of procuring the insurance in terms of this clause.

30. COMPLIANCE WITH LAWS AND POLICIES

The Lessee shall:

- 30.1 not contravene or permit the contravention of any Law, bye-Law, ordinance, proclamation or statutory regulation or the conditions of any licence relating to or affecting the occupation of the Leased Premises or the carrying on of the Business on the Leased Premises, or that derives from and/or affects the ownership of the Property by the Lessor or the Lessor's rights in relation to the Property. The Lessee shall further not contravene or permit the contravention of the conditions of the title deeds of the Property and/or Head Lease between the Lessor and the owner of the Property, as the case may be, and shall immediately cease any such contravention upon receipt of written notice of the contravention by the Lessor.
 - 30.2 obtain the Lessor's consent before commencing a new activity which may impact on the existing licences relating to the Leased Premises.
 - 30.3 obtain and/or renew as required by Law from time to time the requisite licences in connection with any business which it proposes to and/or does carry on, on the Leased Premises.
 - 30.4 comply with all requirements and policies notified by the Lessor to the Lessee in writing from time to time, save to the extent to which any of them are inconsistent with the terms of the Lease.
 - 30.5 The Lessee hereby warrants and undertakes that it is and that it will remain for the duration of this Lease, compliant with all relevant Laws, bye-Laws, ordinances, proclamations or statutory regulations applicable to the Lessee including, without limitation, and where applicable, the Petroleum Products Act, the Labour Relations Act, 1995, the Basic Conditions of Employment Act, 1997, the Income Tax Act, 1962, the Value Added Tax Act, 1991 the Companies Act, 2008, the National Environmental Management Act, 1998 and any other legislation referred to elsewhere in this Lease or any amendment thereto or any replacement thereof and further that it shall maintain all licenses, authorisations and permits required to ensure that it functions as a Lawful business entity. The Lessee shall provide the Lessor with proof of compliance with all relevant legislation in such form as the Lessor may deem necessary on demand. Notwithstanding anything contained elsewhere in this Lease, the Lessee's failure to comply with any relevant Law, bye-Law, ordinance, proclamation or statutory regulation shall be deemed to be a material breach of this Lease which shall entitle the Lessor to summarily cancel this Lease by written notice. The Lessee shall have no claim against the Lessor of any nature whatsoever arising from such cancellation. The Lessee hereby indemnifies and holds the Lessor harmless against any claim by any third party arising from the Lessee's breach of its warranty as set out herein.
- 31. HEALTH, SAFETY, SECURITY AND THE ENVIRONMENT**
- 31.1 The Lessee shall at all times during the Lease period and/or occupation of the Leased Premises and whether in compliance with any of the provisions of the Lease or otherwise, take reasonable care and reasonably practicable precautions for the purposes of preventing the exposure of any person or Property to any hazard.
 - 31.2 In so doing, the Lessee shall comply with the provisions of all relevant health, safety and environmental legislation as well as such health, safety and environmental standards of operation as prescribed by the Lessor in the Health, Safety, Security and Environment Operating Procedures Manual and as the Lessor may from time to time advise the Lessee in writing.

- 31.3 The Lessee hereby acknowledges that the keeping, carrying or storage of firearms of any calibre whatsoever or any other dangerous weapon on the Leased Premises is strictly prohibited save by any person who, in the ordinary course of his or her business or employment, is reasonably required and lawfully entitled to keep or carry a firearm on their person, including but not limited to police officers, cash in transit and armed response personnel. The Lessee undertakes to ensure that its employees, agents and invitees are made aware of, and are obliged to comply with this prohibition where it lies within the Lessee's rights to enforce compliance. The Lessee further acknowledges that the failure by it or its employees, agents or invitees to comply with this prohibition shall constitute a material breach of the Lease going to the root thereof. The prohibition on the carrying a dangerous weapon on the Leased Premises as stipulated in the clause shall not apply to members of the South African Police Services or the employees or contractors of third parties duly authorised to conduct armed response activities and cash in transit activities, including the replenishment of ATM's at the Leased Premises.
- 31.4 For the purposes of the Occupational Health and Safety Act, 1993 as amended, or any replacement thereof or similar enactment, the Lessee records its acknowledgement that:
- (a) the Service Station Equipment and the Storage and Dispensing Equipment (collectively referred to in this clause 31.4 as "the aforesaid equipment") have been supplied by the Lessor to the Lessee, and erected and installed in the Leased Premises in a manner which renders the aforesaid equipment safe and free of risk to the health of the employees of the Lessee when properly used;
 - (b) the Lessor's Products will be supplied by the Lessor to the Lessee, and that such products will be handled by the Lessee and its employees in conjunction with the aforesaid equipment;
- 31.5 It has received from the Lessor information with regard to:
- (a) the use of the aforesaid equipment and/or the Lessor's Products, including the relevant material safety data sheets;
 - (b) the risks to health and safety associated with the aforesaid equipment and/or the Lessor's Products;
 - (c) the conditions necessary to ensure the aforesaid equipment and the Lessor's Products will be safe and without risk to health and safety when properly used;
 - (d) the proper use of the aforesaid equipment and/or the Lessor's Products;
 - (e) the procedures to be followed in the case of an accident involving the aforesaid equipment and/or the Lessor's Products; and
 - (f) the requirements prescribed in respect of the aforesaid equipment and/or the Lessor's Products.
- 31.6 To the extent that procedures for the avoidance of risks to health and safety of persons and Property arising from the use of the Lessor's Products and/or the aforesaid equipment are contained in the Operating Procedures Manuals and any amendments thereto, as notified by the Lessor to the Lessee from time to time, the Lessee or the Lessee's duly authorised representative shall be responsible for ensuring compliance with such procedures.

- 31.7 It undertakes that aforesaid equipment and/or the Lessor's Products will be used in accordance with and due regard to the information referred to in 31.5 above, as well as all other information advised to the Lessee by the Lessor from time to time.
- 31.8 It undertakes that, notwithstanding, and without derogating from the generality or specificity of 31.5, 31.6 and 31.7 above, the following steps will be followed:
- (a) the aforesaid equipment will be used only as designated by the Lessor;
 - (b) the aforesaid equipment and/or the Lessor's Products will be handled and/or used only by persons fully trained in their proper use;
 - (c) when not in use or not under the direct supervision of a properly trained person, the aforesaid equipment and/or the Lessor's Products, as the case may be, shall be rendered inoperable or inaccessible, as the case may be;
 - (d) the information referred to in 31.5 and 31.6 above shall be available to all persons who may be affected by the use or presence of the aforesaid equipment and/or the Lessor's Products at the Leased Premises.
- 31.9 Failure by the Lessee to comply with its obligations in terms of clause 29 shall render it responsible for any Loss arising out of such failure and the Lessee hereby indemnifies the Lessor in respect of any such Loss so arising.
- 31.10 Unless supplied by the Lessor, the Lessee shall provide at its own cost such fire extinguishers, fire hoses, hose reels and other fire-fighting equipment as the Local Authority or the Lessor may require at the Leased Premises, and shall during the currency of the Lease maintain the same continuously in proper working order, and carry out such checks and inspections at such intervals as may be prescribed by the Lessor and/or any competent authority. The Lessor shall not be responsible for any Loss arising as a result of the Lessee's failure to comply with this clause and indemnifies the Lessor against such Loss.
- 31.11 The Lessee acknowledges that, as the consignee (as defined in the National Road Traffic Act No. 93 of 1996, as read with the South African National Standards (SANS) code 10231: 2006) of Petroleum Products, which constitute dangerous goods (as defined in such Act and Standards), that it shall so comply, and the Lessee, in discharging its aforementioned obligations, shall comply with the Lessor's delivery procedures as set out in the relevant Operations Manual.
- 31.12 The Lessee indemnifies the Lessor against all claims, Losses, damages, fines and costs arising from and in consequence of any failure by the Lessee to comply with any statutory obligations imposed upon the Lessee under the provisions of the Water Act No. 54 of 1956 and its replacement, the National Water Act No. 38 of 1998 and the Occupational Health and Safety Act 85 of 1983 and any other related legislation/regulations or arising from or in consequence of the Lessee's failure to ensure compliance with its obligations referred to in this 31.
- 31.13 The Lessee shall be required to comply with the Lessor's Security Policy requirements, as laid down in the Lessor's Health, Safety, Security and Environment Operating Procedures Manual. Without limiting the generality thereof, the Lessee shall be required to:
- (a) at all times make use of a cash collection and banking facility provided by a party approved by the Lessor from time to time. Should the Lessee wish to make use of a cash collection or a

banking facility which has not been approved by the Lessor, the Lessee must provide the Lessor with all the necessary details of the cash collection or banking facility proposed by the Lessee and the Lessor will, in its discretion, either approve or reject the use by the Lessee of such cash collection or banking facility. The Lessee will be notified of the Lessor's decision in writing and, if the cash collection or banking facility has been approved by the Lessor, the Lessee shall thereafter be entitled to use such cash collection or banking facility for the purposes aforementioned;

- (b) ensure that the tills at the Leased Premises are emptied at regular intervals and that the money therein does not at any time exceed the amount prescribed by the Lessor from time to time;
- (c) take all necessary steps to ensure that at no time is any amount of money that exceeds the currently prescribed till limit is handled or counted anywhere within the premises without limitation to that prohibition;
- (d) ensure that it will have employed such number of employees in total and have on duty at any particular time, such number of employees and, in particular, pump attendants and other staff, as may be necessary for satisfactory operation of the Business for the periods during which the Business is to remain open in terms hereof;
- (e) continuously operate such security camera surveillance ("CCTV") equipment as prescribed by the Lessor or otherwise permitted by the Lessor and, unless such CCTV equipment has been supplied by the Lessor, maintain such CCTV equipment so as to ensure that it is at all times in good working order;
- (f) take steps to ensure that the Lessee's employees are fully trained for the purpose of meeting the Lessor's requirements, including, without limitation, those relating to cash handling, the management of armed robberies and fire.

32. LESSOR'S TRADEMARKS

- 32.1 The Lessee shall, from time to time, execute such agreements and documentation relating to the BP Marks as the Lessor may from time to time specify and which are required to give effect to the Lease. The Lessee shall assist the Lessor, where necessary, in any recording of the Lessee as a registered User of the BP Marks and the Lessee hereby undertakes to appoint the Lessor or the duly authorised representative of the Lessor to act as its agent in this connection. Pending the execution of such agreements or documentation, the Lessee acknowledges that the use of the BP Marks are at the sufferance of the Lessor, who shall be entitled at any time to withdraw the BP Marks from use at the premises, or impose conditions aimed at the protection of its proprietary rights in the BP Marks. The Lessee shall not acquire any rights in the BP Marks as a result of such use.
- 32.2 Subject to complying with its obligations under the agreements referred to in 32.1, the Lessee shall ensure that its status as an undertaking, independent from the Lessor, is indicated at the premises and on all written communications and receipts sent or issued by the Lessee in the course of operating the Business.
- 32.3 The Lessee acknowledges that the goodwill and all other rights in and associated with the Business is the Intellectual Property of the Lessor, and that the Lessee has no claims of any nature to any element of such Intellectual Property. The Lessee hereby agrees:

- (a) not to cause or permit anything which may damage, threaten or endanger the Intellectual Property or the Lessor's title to it or assist or allow others to do so;
- (b) to Immediately notify the Lessor in writing of any suspected infringement of the Intellectual Property of the Lessor;
- (c) to take such reasonable action as the Lessor shall direct (at the expense of the Lessor) in relation to such Infringement;
- (d) to only affix such notices to the Lessor's Products or their packaging or advertising associated with the Businesses as the Lessor shall direct;
- (e) to compensate and indemnify the Lessor for any use by the Lessee of the Intellectual Property otherwise than in accordance with this Lease;
- (f) to indemnify the Lessor for any liability incurred to third parties for any use of the Intellectual Property otherwise than in accordance with this Lease;
- (g) on the expiry of this Lease, forthwith to cease to use the Intellectual Property;
- (h) not to tamper with any markings or name plates or other indication of the source of origin of the Lessor's Products which may be placed by the Lessor on the Lessor's Products;
- (i) not to use the Intellectual Property otherwise than as permitted by this Lease;
- (j) not to use any name or mark similar to or capable of being confused with the trade names or the BP Marks or other Intellectual Property in the Business;
- (k) not at any time attack or challenge the right of the Lessor to the Intellectual Property or to induce or procure any other person to attack or challenge such rights;
- (l) to display such notices concerning the Intellectual Property or the relationship between the Parties on its stationery and at the premises as is stipulated in the Operating Procedures Manuals prescribed by the Lessor from time to time;

32.4 The Lessee also:

- (a) acknowledges the Lessor's sole and exclusive right, title and interest in and to the Intellectual Property and BP Systems;
- (b) undertakes that it will not directly or indirectly assist or, whether itself or with or through a third person, do anything which could contest, impair or prejudice the validity of or the Lessor's right, title and interest in or to the Intellectual Property and the BP Systems;
- (c) acknowledges that it has no rights or claims whatsoever in or to any element of the Intellectual Property and the BP Systems;
- (d) shall not directly or indirectly represent that it has any rights or claims therein and, without limiting the generality of the foregoing, may not deal in the Intellectual Property and/or the BP Systems or alienate, encumber, cede, assign, transfer or grant rights in respect of them to

any person whether related or associated or otherwise; and the provisions hereof apply equally to any matter bearing any part of the Intellectual Property and/or the BP Systems;

- (e) shall not for its own benefit or for the benefit of any other person, directly or indirectly, use or avail itself of or derive any profit or advantage from any part of the Intellectual Property and/or the BP Systems, except as expressly provided for in this Agreement in relation to the Business;
- (f) shall only use the Intellectual Property and/or the BP Systems exactly and accurately in accordance with the Operating Procedures Manual;
- (g) shall not use its own name or any other matter in connection with any part of the Intellectual Property and/or the BP Systems, unless first approved in writing by the Lessor;
- (h) shall not register any part of the Intellectual Property, or endeavour to do so, in any way;
- (i) shall sign such user agreement as the Lessor requests in respect of the Trade Marks for the registration of the Lessee as a user thereof at any relevant Trade Marks Register;
- (j) in using or publishing any part of the Intellectual Property and/or the BP Systems, shall ensure that the Lessor's ownership thereof is acknowledged in accordance with the Operating Procedures Manual;
- (k) shall, upon the request of the Lessor, immediately cease using any of the Trade Mark and sign any necessary cancellation of user agreement and application for deregistration as a user;
- (l) acknowledges that the Lessor may cede or assign the Intellectual Property or any part thereof at any time whatsoever without the written consent of the Lessee and that, in the event of any such cession or assignment, this Agreement will remain binding between the Lessee and the cessionary or assignee;
- (m) shall not do anything which might prejudice the Lessor's rights in or to any part of the Intellectual Property.

32.5 The Lessee undertakes to ensure that the Petroleum Products offered at the premises shall be packaged in such manner as shall be prescribed by the Lessor from time to time, and that the Lessee's employees are at all times, whilst on duty, dressed in the uniforms prescribed by the Lessor from time to time in the Operating Procedures Manuals and which uniforms will be maintained in a clean and tidy condition and replaced from time to time when necessary.

33. PUBLIC AMENITIES

The Lessee undertakes, save where the Lessor's consent to the contrary shall have been obtained in writing;

- 33.1 to ensure that the Public Amenities on the Leased Premises shall at all times be accessible and free of charge to all members of public;
- 33.2 at all times to keep the Public Amenities in a neat, clean and sanitary condition, and serviced at such intervals as may be required to maintain the standard prescribed by the Lessor, and in the case of public toilets properly provided with toilet paper, soap and hand drying facilities;

- 33.3 to ensure that no vehicles are parked or permitted to be parked anywhere on the Leased Premises other than at spaces designated for parking;
- 33.4 where food is sold from the Leased Premises, to ensure that the area in which the food is prepared and sold is kept in a neat, clean and sanitary condition;
- 33.5 to ensure that no vehicle repairs take place on the Leased Premises except in areas specifically designated for that purpose.

34. UNDERTAKINGS IN RESPECT OF OWNERSHIP OF LESSEE'S BUSINESS AND INTEREST IN LESSEE

- 34.1 Any change by the Lessee of its trading structure or style to a partnership or limited company, close corporation or in any other manner shall only be effected in terms of the provisions of this Lease, provided however that there shall be no change in the trading structure or style of this Lease during the Moratorium.
- 34.2 The Lessee, being a company or close corporation, this Lease is concluded with the Lessee on the condition (which is the essence of this Lease) that the Lessor has satisfied itself with the identity of the members and/or shareholders in the company or close corporation and no sale, alienation or transfer of the members' interest in the company or close corporation may take place other than in terms of this Lease.
- 34.3 It follows, therefore, that the Lessee undertakes that:
 - (a) During the Moratorium:
 - (i) there shall be no change in the ownership of the Business;
 - (ii) If the Lessee is a Company there shall be no change in the capital structure or shareholding of the Company, nor shall any of the shareholders in the company at the Commencement Date, transfer or alienate or dispose of any of their shares in the Lessee;
 - (iii) the Lessee is a trust, there shall be no change of the trustees of the trust or the beneficiaries under the trust;
 - (iv) If the Lessee is a Close Corporation its members shall not during this Lease period, transfer or alienate or dispose of any part or whole of their members' interest in the close corporation.
 - (b) Save for clause 34.3 (a), for the remaining Lease Period and with the written consent of the Lessor, which the Lessor may not (subject to 34.9 below) unreasonably withhold –
 - (i) there shall be no change in the ownership of the Business of the Lessee as existing at the Commencement Date in any manner whatsoever by sale, lease, alienation or any other form of disposal;
 - (ii) if –

- (1) the Lessee is a company, there shall during the Lease period be no change in the capital structure of the company, nor shall the shareholders in the company at the Commencement Date, transfer or alienate or dispose of their shares in the Lessee;
 - (2) the Lessee is a close corporation, its members shall not during this Lease period, transfer or alienate or dispose of any part or whole of their members' interest in the close corporation;
 - (3) the Lessee is a trust, there shall be no change during this Lease period of the trustees of the trust or the beneficiaries under the trust;
- (c) notwithstanding anything hereinabove contained, there shall be no bar to the change of ownership of any part of the members' interest in the Lessee or its shareholding, of which the Lessor will have received not less than 14 (fourteen) days' prior written notice, provided that, pursuant to such change, the such members' interest or shareholding that is the subject of the change is held by a family member or a family trust, as the case may be. For the purpose hereof, family member means a Dealer Principal or any parent of a Dealer Principal or child or current spouse or sibling of a Dealer Principal or other person acknowledged by the Lessor in its discretion and in writing to be the person or persons who has or have the greatest interest, or any sibling of theirs or any children or a spouse to whom he/they/she is married for the time being and from time to time, and family trust means a trust in which all the beneficiaries are family members and the trustees are likewise family members;
- (d) it is recorded and acknowledged that while trustees have the right to contract for and on behalf of and may have the right to enjoy the rights and obligations of the entity that is a trust, to the extent that a trustee is not a family member contemplated in clause (c) and is merely a formal or professional appointee, the change in the identity of any such trustee shall not bring into effect the provisions of this clause 34, save that it shall be incumbent upon the trustees of the trust to inform the Lessor in writing of the change in such formal appointment. The trustees shall bear the onus of proving that any appointment of a trustee is a formal appointment;
- (e) should there be any contravention of the provisions of clauses (a), (b), (c) and/or (d) the Lessor shall be entitled at its option:
- (i) in any event to terminate the Lease immediately, in which event all amounts due by the Lessee to the Lessor shall immediately become due and payable;
 - (ii) If the ownership of the Business will have been changed, to enforce the terms of the Lease and hold the Lessee liable for payment of the price of any of the Lessor's Products sold and delivered by the Lessor to the proprietor of the Business after such change of ownership takes effect, in which event all such Lessor's Products shall be deemed to have been ordered by the Lessee on the Lessee's account, with the new proprietor of the Business acting as the Lessee's duly authorised agent and/or manager. The Lessee hereby waives any right to contend that the Lessee is not liable for such Lessor's Products by reason that the Lessor may have had knowledge of the presence on the Leased Premises of any third party purporting to act as, or who in fact is, proprietor of the Business, or for any other reason whatsoever;

- (iii) the Lessee hereby, in addition to and without derogating from its obligations and liabilities under (i) and (ii) hereby intercedes on behalf of such third party in favour of the Lessor as co-principal debtor unto and in favour of the Lessor for all indebtedness incurred by any such third party to the Lessor as if the Lessee had itself incurred such indebtedness.

34.4 If the Lessee wishes to transfer the ownership of the Business to a third party, It shall obtain:

- (a) a valuation for the Business from a valuer who has been consented to by the Lessor, or from the Lessee's auditor, in accordance with a valuation methodology to be prescribed by the Lessor, but which valuation methodology shall take into account cash flows of the Business for the immediately preceding period of 36 (thirty six Months) from the date that the Lessee receives the bona fide offer referred to in 34.4(b) below and EBITDA of the Business;
- (b) a written *bona fide* offer from that third party, containing an acknowledgement from that third party that they have had sight of the valuation referred to in clause 34.4(a); and
- (c) a written undertaking from the third party to maintain the prescribed percentage of BEE shareholding in terms of industry sector codes or the Lessor's own transformation policy, at all times for the remainder of this Lease.

34.5 If the members or shareholders of the Lessee, in the case that the Lessee is a company or close corporation, wish to transfer any of their shares or members' interest or part thereof to a third party as the case may be, they shall procure:

- (a) a valuation for the shares or members' interest from a valuer who has been accredited by the Lessor, in accordance with a valuation methodology to be prescribed by the Lessor, but which valuation methodology shall take into account cash flows of the Business for multiple periods of 36 (thirty six Months) each and EBITDA of the Business;
- (b) a written *bona fide* offer or offers from any third party or third parties setting out the full terms and conditions of such offer, containing an acknowledgement from that third party that they have had sight of the valuation referred to in clause 34.5(a); and
- (c) a written undertaking from the third party to maintain the prescribed percentage of BEE required shareholding in terms of the Lessor's own transformation policy failing which, industry sector codes at all times for the remainder of this Lease.

34.6 Upon receiving any offer referred to in 34.4 or 34.5, which the Lessee and/or the members/shareholders of the Lessee are prepared to accept, the Lessee and/or the members/shareholders shall immediately notify the Lessor thereof in writing and furnish the Lessor with copies thereof.

34.7 For purposes of this clause 34, a valuation for the Business or the shares or members interest in the Lessee shall be carried out by a valuer who has been consented to by the Lessor or by the Lessee's auditor. If the valuation is conducted by the Lessee's auditor then the valuation must clearly indicate that this is the case.

34.8 The Lessor shall have the option, within a period of 30 (thirty) days from the date of delivery of any such notification and offer referred to in 34.6:

- (a) in the case of an offer to the Lessee to purchase the Business, to instruct the Lessee in writing to cede and assign the Lease to the Lessor's nominee in respect of whom the Lessor acts as agent, at the price determined in terms of the valuation referred to in clause 34.4(a) and on the same terms and conditions offered by the third party who made that offer the Lessee will comply with that instruction within 30 (thirty) days of receipt of such instruction;
- (b) in the case of an offer to the members or shareholders of the Lessee to acquire any or all of the members' interest or shares in the Lessee, ("the third party offer") instruct the members of the Lessee in writing to transfer, at the option of the Lessor:
 - (i) such part of the members' interest or shares to the Lessor's nominee, in respect of whom the Lessor acts as agent, at the price as determined by the valuer accredited by the Lessor in terms of clause 34.4(a) and on the terms and conditions offered by the third party who made that offer or offers; or
 - (ii) the whole of the members' interest or shares to the Lessor's nominee, in respect of whom the Lessor acts as agent, at the price as determined by the valuer accredited by the Lessor in terms of clause 34.5(a) and on the terms and conditions offered by the third party who made that offer or offers, multiplied by the proportion that the whole of the members' interest or shares bears to the part in respect of which the third party offer was made; or

and the members and the shareholders of the Lessee will comply with that instruction within a period of 30 (thirty) days of the delivery of such instruction;

- (c) notwithstanding the Lessor having exercised any of its options in terms of clauses (a) and/or (b), it is recorded that the Lessee understands that the Lessor or the Lessor's nominee will not be entitled to undertake the sale of petroleum products to the general public from the Premises unless and until all licence requirements arising from such change in ownership of the Business or in the Lessee (without derogating from the generality of the foregoing, in particular those arising under the Petroleum Products Act), will have been complied with. In particular, in the event that the Lessor consents to the sale of the Business or transfer of ownership in the Lessee, the Lessee hereby undertakes, to surrender the retail licence granted to it in accordance with the Petroleum Products Act, within ____ days of receiving of written request from the Lessor calling upon it to do so.

34.9 If upon the expiry of the 30 (thirty) day period referred to in 34.78 above the Lessor has not exercised any of the rights therein, then the Lessee may not proceed with any transfer or transfers unless the Lessor will have given prior written consent to such transfer, which the Lessor shall not be obliged to do under any circumstances ("transfer" for the purpose of this clause 34.9 shall mean, in the case of the sale or alienation of the Business, cession and assignment of this Lease and/or any of the ancillary agreements currently in force between the Lessor and the Lessee or, in the case of the sale or alienation of the members' interest or shares in the Lessee, such sale of the members interest or shares, and "successor" shall mean either the Lessee's successor-in-title or the successors-in-title of the members of the Lessee, as the case may be, such as is appropriate in the circumstances).

34.10 Without limiting any discretion of the Lessor, as set out in clause 34.3 or 34.8, the Lessor shall not be obliged to grant its consent if:

- (a) the Lessee has not procured the valuation for the Business, the shares or the members' interest from a valuer accredited by the Lessor;
- (b) the proposed successor is, or its directors and principal shareholders or members do not, in the Lessor's discretion, meet the Lessor or Lessor's business partnership requirements, which requirements shall be based on amongst other factors, the Lessor's Dealer Selection Policy, the DOE's Liquid Fuels Charter, any stipulations from the DOE or any stipulations from the Economic Active Population Statistics.
- (c) the proposed successor is, or its directors and principal shareholders or members are, in the Lessor's opinion reputable and responsible, and are of satisfactory financial stature and possessed of sufficient commercial experience to perform the obligations of the Lessee hereunder;
- (d) the Lessee is not at that time in breach of any of its obligations hereunder;
- (e) the proposed successor has not met or will not meet the Lessor's reasonable requirements as to the training of persons involved in running the Business, where applicable;
- (f) the proposed successor has not agreed to accept the transfer of the Lease and any other agreement with the Lessor, referred to in this Lease;
- (g) the Lessee has not paid or secured payment of all sums necessary to complete the transfer;
- (h) the Lessee has not executed and caused the proposed successor to execute a cession and assignment of the Lease and/or other agreements or conclude fresh agreements on similar terms and conditions at the Lessor's discretion and in a form acceptable to the Lessor;
- (i) the proposed successor has not undergone such training to the satisfaction of the Lessor as may reasonably be required to enable the successor to operate the Business;
- (j) the Lessee has not paid all monies owed by the Lessee to the Lessor by the due date of the transfer;
- (k) the successor has not agreed to pay to the Lessor the fee or fees determined by the Lessor contemplated in the Franchise Agreement and the Initial Fee. Such fees as are to be paid by the date of the successor having taken transfer of the Lessee's obligations and/or the Lessee's members' obligations, as the case may be, and shall be secured by the successor delivering an acceptable bank guarantee, alternatively, and at the option of the Lessor, by payment by way of a bank guaranteed cheque, which shall be presented to the Lessor within 14 (fourteen) days of the Lessor having approved the proposed transfer or the proposed date of occupation, whichever is the earlier;
- (l) the terms of the agreement in terms of which any transfer of the Business in terms of clause 34.4, or of any shares or members' interest in terms of clause 34.5, or the terms upon which any funding has been obtained of the purpose of paying the purchase price of the Business or such shares or member's interest, as the case may be, are, in the reasonable opinion of the Lessor, likely to adversely affect the continued profitability or sustainability of the Business.

34.11 If the Lessor consents to any of the changes referred to in this clause 34, then:

- (a) such consent shall, in any event, be subject to such further conditions as the Lessor may in its sole and absolute discretion decide, including, without limitation:
 - (i) the Lessee's successor meeting whatever the Lessor's requirements for operators of service station businesses;
 - (ii) the Lessee's successor having successfully completed the Lessor's training programme for service station operators;
 - (iii) the Lessee's successor paying such sums as the Lessor may require;
 - (iv) without derogating from the provisions of 34.10(k) above, the provisions of any Letter of Appointment addressed by the Lessor to the Lessee's successor consenting to the proposed change being complied with;
- (b) the Lessee shall procure that any person who becomes the owner of part or whole of the shares in the Lessee, or part or whole of the members' interest in the Lessee, as the case may be, or any trustees who are substituted for those trustees of the trust conducting itself as the Lessee as at the Commencement Date, bind themselves to all the terms and conditions of this Lease and any other existing agreement with the Lessor.

35. IMPOSSIBILITY OF PERFORMANCE

35.1 In the event of the total or partial prohibition of or restriction, whether by Law, or at the instance of national or provincial government or any local authority, or for any reason whatsoever, in -

- (a) the storage and/or sale of petroleum fuel and/or Petroleum Products in or upon the Leased Premises; or
- (b) the erection and maintenance of the Storage and Dispensing Equipment or any part thereof in or upon the Leased Premises, ,

then and in such event, the Lessor shall have the right to terminate the Lease from the date upon which such prohibition takes effect and the Lessee shall not have any claim for damages or otherwise against the Lessor in consequence of such termination.

35.2 Should the Leased Premises and/or the Storage and Dispensing Equipment or any portion thereof be expropriated or compulsorily taken over (whether permanently or temporarily) by any competent authority, then the Lessor at its option shall be entitled forthwith to terminate the Lease or alternatively, in the case of an expropriation or taking over of a portion of the Leased Premises and/or the Storage and Dispensing Equipment, to grant the Lessee a pro rata reduction in the rental, such reduction to be determined by mutual agreement, failing which by arbitration under the provisions of clause 38.

36. BREACH OF LEASE

36.1 Should the Lessee:

- (a) fail and/or neglect to ensure that there is at all times at the Leased Premises sufficient stock of the Petroleum Products available for resale to the motoring public; or

- (b) be unable, for any reason whatsoever, to dispense any of such Petroleum Products through the Lessor's dispensing equipment installed on the Leased Premises; or
- (c) be unable for any reason whatsoever to supply any member of the public with Petroleum Fuels from the Storage and Dispensing Equipment on the Leased Premises; or
- (d) commit a breach of any one or more of the provisions contained in clauses 8.1 relating to the use of the Leased Premises and/or clause 15 relating to the use of equipment and/or relating to the Lessee's undertakings concerning supply and re-sale of the Lessor's Products and/or relating to accounting and stock control and/or relating to insurance and/or relating to compliance with Laws and policies and/or relating to Health, Safety, Environment and Security Management; or
- (e) fail to pay any amount due by it in terms of the Lease on due date and fail to remedy such breach within a period of 7 (seven) days after the dispatch of written notice by the Lessor calling for such payment;
- (f) have stored, acquired, sold or be in possession of Irregular Product; or
- (g) discontinue or suspend the sale of Petrol and Petroleum Products of the Lessor for any reason whatsoever, or
- (h) commit any breach or permit the commission of any breach of any other term of the Lease and fail to remedy that breach within 14 (fourteen) days after the giving of written notice to that effect by the Lessor (provided that should such breach be one which is not reasonably capable of being remedied within a set period of 14 (fourteen) days, then the Lessee shall be allowed such additional period as is reasonably required therefor), or

then in any such event, the Lessor shall, without prejudice to its rights to damages or to any other claim of any nature whatsoever that the Lessor may have against the Lessee as a result thereof, be entitled, at its option, itself to remedy or procure the remedy of such breach and immediately recover the total costs incurred by the Lessor in so doing from the Lessee, or forthwith to cancel this Lease on written notice to the Lessee, or to vary the period of the Lease by making it terminable on 1 (one) Month's written notice.

36.2 Should either Party ("the defaulting Party"):-

- (a) commit an act of insolvency; or
- (b) fail to satisfy a default judgement within 7 (seven) days of it being entered against it; or
- (c) fail to satisfy any other judgement or to take it on appeal or review within 21 (twenty-one) days of it being entered against it; or
- (d) compromise or attempt to compromise any of its liabilities with its creditors generally or any class of its creditors; or
- (e) be provisionally or finally sequestrated or placed under judicial management or be placed in business rescue (as contemplated in the Companies Act, 2008); or

- (f) commit any other breach of this Lease, including those in respect of which it has received notice, on 2 (two) or more occasions within a period of 6 (six) Months and, in the case of a breach requiring notice, whether or not it will have rectified such breach within the period of notice,
- (g) fail to comply with the provisions of the Letter of Appointment or the Site Performance Contract on 3 or more occasions in a 12 (twelve) Month period;

then in any such event, the other Party ("the aggrieved Party") shall, without prejudice to its rights to damages or to any other claim of any nature whatsoever that the aggrieved Party may have against the defaulting Party as a result thereof, be entitled forthwith to cancel this Lease on written notice to the defaulting Party or vary the period Lease by making it terminable on 1 (one) Month's written notice.

36.3 Notwithstanding anything hereinabove contained, if the Lessee commits any breach of the Lease whatsoever, the Lessor shall, notwithstanding whether the Lease is cancelled or not, be entitled, without prejudice to any other rights that the Lessor may have arising from such breach, to:

- (a) withhold supplies of Petroleum Products to the Lessee; and/or
- (b) withhold payments of any rebates or discounts to which the Lessee might have become entitled; and/or
- (c) demand the immediate payment of all amounts owing by the Lessee in respect of any obligation under the Lease which shall become due and payable immediately upon demand by the Lessor.

36.4 In the event that the Lessee, purchases Petroleum Products from any third party in contravention of the provisions of this Lease, including without limitation in contravention of clause 22, the Lessor shall be entitled subject to its rights in clause 36.1, to charge the Lessee a fee, which shall be calculated as follows:

$$M = N \times O$$

where "M" is the fee payable by the Lessee

where "N" is the number of litres of Petroleum Fuels purchased by the Lessee from a third party, as calculated by the Lessor in terms of its own purchase and sales records and Automatic Stock Replenishment System

where "O" is equivalent to the Retail Margin on the pump price of Petrol as determined by the DOE or the Controller of Petroleum Products, from time to time and published in the Government Gazette.

36.5 Nothing herein contained shall be construed or implied to mean that if the Lessor exercises any of its rights under this clause 36, it shall waive its right to claim damages of any sort suffered by the Lessor which it shall have the full right and entitlement so to do.

36.6 If the Franchise Agreement or Pick 'n Pay Supply Agreement entered into, if any, is terminated for any reason whatsoever, the Lessor shall be entitled, without any prejudice to any other rights the Lessor may have arising as a consequence thereof, to cancel this Lease and the other provisions of this clause 36 such as are appropriate, shall apply as appropriate under the circumstances.

- 36.7 The Lessee expressly acknowledge that the conclusion of this Lease, the implementation thereof, the assertion of any rights under this Lease, the termination thereof, the eviction of the Lessee from the premises in accordance with the Lease, is and will be in the contemplation of the Parties, reasonable, and therefore, that none of the foregoing are unreasonable provisions or unreasonable contractual practices, as contemplated by the Petroleum Products Act.

37. HOLDING OVER BY THE LESSEE

- 37.1 While the Lessee remains in occupation of the Leased Premises and irrespective of any dispute between the Parties, including but not being restricted to, a dispute as to the Lessor's right to terminate the Lease, then:

- (a) the use and occupation of the Leased Premises shall continue to be governed by the terms of this Lease, save to the extent set out in the remainder of this clause 37;
- (b) the Lessee shall continue to pay all amounts due to the Lessor in terms of the Lease on the due dates thereof;
- (c) the Lessor shall be entitled to recover and accept those payments;
- (d) the acceptance by the Lessor of those payments shall be without prejudice to and shall not in any manner whatsoever affect the Lessor's claim to termination of the Lease or for damages or for any other relief whatsoever;

- 37.2 Should the dispute between the Lessor and the Lessee be determined in favour of the Lessor, then the payments made to the Lessor in terms of clause 37.1 shall be regarded as amounts paid by the Lessee on account of the loss and/or damages sustained by the Lessor as a result of the holding over by the Lessee of the Leased Premises.

- 37.3 Notwithstanding anything to the contrary contained or implied in this clause 37 or elsewhere in this Lease, the continued occupation of the Leased Premises by the Lessee after the date of termination of the Lease shall not be construed as conferring upon the Lessee any right to lawfully occupy the Leased Premises for any period of time, whether monthly, fixed, definite or indefinite in duration, unless such right is expressly so stated in a written document signed by the Lessor (as represented by for such purposes by the Lessor's Head of Retail Operations or a person duly designated by him, in writing, expressly for the purpose aforementioned).

38. DISPUTE RESOLUTION

- 38.1 The Parties agree to attempt to resolve any dispute, question or difference arising at any time between the Parties to this Lease in regard to the matters arising out of, or the rights and duties of any of the Parties hereto, or the interpretation or termination of, or any matter arising out of the termination or the rectification of this Lease by mediation, which, failing agreement between them on the procedure and the identity of the mediator, shall be conducted under the then current mediation procedures of the Arbitration Foundation of South Africa ("AFSA"), and by a mediator nominated by AFSA.
- 38.2 The Parties undertake to participate in good faith participation in mediation before pursuing any other available legal or equitable remedy, including litigation, arbitration or other dispute resolution procedures.

- 38.3 Either Party ("the initiating Party") may commence the mediation process by giving written notice to the other, setting out the subject matter of the dispute, question or difference or the relief requested. Within ten (10) days after the receipt of such notice, the other Party shall deliver a written response to the initiating Party's notice. The initial mediation session shall be held within thirty (30) days after the initial notice.
- 38.4 The Parties agree to share equally the costs and expenses of the mediation (which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation).
- 38.5 The Parties acknowledge and agree that mediation proceedings are settlement negotiations, and that, to the extent allowed by Law, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by either of the Parties or their representatives shall be privileged and inadmissible in any arbitration or other legal proceeding involving the Parties; provided, however, that evidence which is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- 38.6 In the event that the any dispute shall not have been resolved by mediation within 30 (thirty) days of the initial mediation session contemplated in terms of clause 38.3, either Party may, on written notice to the other refer such dispute to arbitration.
- 38.7 If either Party will have decided to submit a dispute to arbitration, then arbitration shall be conducted in accordance with the then current rules of the Arbitration Foundation of South Africa.
- 38.8 Each of the Parties hereby Irrevocably agrees that the decision of the Arbitrator in the arbitration proceedings:
- (a) shall be final and binding on each of them; and
 - (b) will be carried into effect; and
 - (c) can be made an Order of any Court to whose jurisdiction the Party against which the Order is sought are subject.
- 38.9 The provisions of this clause shall not be construed to limit the right of either of the Parties to proceed against the other party in any court of competent jurisdiction for the purpose of obtaining the appropriate relief that may be required at any time.
- 38.10 This clause shall be severable from the remaining provisions of this Lease and shall continue to be of application, notwithstanding the cancellation or purported cancellation of this Lease.
39. GENERAL
- 39.1 The Lease constitutes the entire agreement between the Lessor and the Lessee in respect of the subject matter thereof, and no variations, amendments or additions thereto shall have any force or effect unless it is in writing and signed by both the Lessor and the Lessee. The Lease or any variation, amendment or addition thereto shall not be binding on the Lessor unless signed by a person duly and actually authorised thereto by the Lessor and the Lessee specifically waives the right to rely on any ostensible authority of any person.
- 39.2 No relaxation or indulgence which either Party may grant to the other shall in any way prejudice such Party's rights hereunder, or preclude or be a stoppage from exercising any rights enjoyed by such Party.

39.3 Should any clause or provision of this Lease be found to be invalid or unenforceable in any way, such clause or provision shall be deemed to be separate and divisible from the remaining provisions of this Lease and the validity and enforceability of the remaining terms and conditions of this Lease shall not be affected.

39.4 Wheresoever the consent of the Lessor is required in terms of the Lease and such consent will have been refused by the Lessor, the onus of proof shall be on the Lessee to show that the Lessor's approval will have been withheld unreasonably. Such consent shall be deemed to have been so reasonably withheld until such time as a competent court shall have found otherwise and all appeals will have been exhausted.

39.5 If a natural person signs this Lease on behalf of a juristic person, he warrants that he is duly authorised and empowered by that juristic person to enter into and execute this Lease.

40. DOMICILIA AND NOTICES

40.1 The Lessor and the Lessee hereby choose *domicilium citandi et executandi* for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from this Lease at their respective addresses set forth hereunder:

(a) The Lessor's *domicilium citandi et executandi* shall be

(i) 199 Oxford Road, Oxford Parks, Dunkeld, 2196.

(ii) Fax number: _____

(iii) E-mail address: _____

(b) The Lessee's *domicilium citandi et executandi* shall be:

(i) The Leased Premises; Cnr Rosmead Ave & Wetton Road, Kenilworth, Wynberg

(ii) E-mail address: wrorke32@gmail.com

40.2 The Lessor and the Lessee shall be entitled from time to time by written notice to the other to vary their *domicilia* to any other address within the Republic of South Africa which is not a post office box or *poste restante*.

40.3 Any notice given and any payment made by a party to the other which:

(a) is delivered by hand during the normal business hours of the addressee at its *domicilium* for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

(b) is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at its *domicilium* for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the seventh day after the date of posting.

40.4 Where, in terms of this Lease any communication is required to be in writing, the term "writing" shall include communications by telefax and electronic mail/email. Communications by telefax and

electronic mail/email shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 24 (twenty four) hours after the time of transmission.

41. VALUE-ADDED TAX

The Lessee shall be liable for the payment of VAT on all payments in respect of which the Lessee is liable to the Lessor and/or any other party hereunder, including without limiting the generality thereof rental, electricity, service charges and insurance.

42. HEAD LEASE

Insofar as the Lessor has tenure in respect of the Property or the Leased Premises under a Head Lease and if such Head Lease is cancelled or terminated for any reason whatsoever, the Lease shall *ipso facto* likewise terminate.

43. LETTER OF APPOINTMENT AND SITE PERFORMANCE CONTRACT

43.1 To the extent that there is any conflict or contradiction between the provisions of the Letter of Appointment or Site Performance Contract and, the provisions of this Lease, the provisions of this Lease shall prevail.

43.2 The Lessee undertakes to maintain the standard of performance and targets as set out fully and in detail in the Letter of Appointment and the Site Performance Contract, which shall be determined and reviewed annually by the Lessor, as agreed to between the Lessor and the Lessee at the time of conclusion of this Lease.

43.3 The Lessee acknowledges that it has full knowledge and understands the contents and what is required in terms of performance as set out in the Letter of Appointment and the Site Performance Contract.

43.4 More specifically, without limiting the provisions of the Letter of Appointment and the Site Performance Contract in any way, the Parties agree that the Lessor shall be entitled to review and determine on an annual basis what the performance targets (including volumetric targets and net profit targets (including without limitation non-fuel income)) which the Lessee must attain for the coming Year. In addition, the Lessor shall be entitled but not obliged at any time during the Lease Period to review and revise such performance targets in circumstances where the Lessor has invested monies in the upgrade of the Leased Premises.

43.5 Any failure by the Lessee to comply with clause 43.2 for a consecutive 6 (six) month period shall constitute a material breach of this Lease which shall enable the Lessor to cancel this Lease immediately and without prejudice to any other rights which it may have in terms of this Lease or in Law.

44. THE CONSUMER PROTECTION ACT

44.1 Acknowledgement

The Lessee acknowledges and understands that:

- (a) the Lessor is committed to offering consumers safety quality products. In order to accomplish this, the Lessor expects its lessees to be knowledgeable about their industry and the products or services they provide to consumers. The Lessor requires a high level of communication and

integrity from each of its lessees so that it can better serve consumers. The Lessor is committed to supplying products to reputable dealers who take its brand integrity seriously;

- (b) since implementation of the CPA strict liability is enforceable against producers, importers, distributors and retailers who can be held collectively and individually liable for any harm caused to a consumer wholly or partly as a consequence of -
 - (i) the supply of unsafe goods;
 - (ii) a product failure, defect or hazard in any goods; or
 - (iii) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of the goods;
- (c) accordingly, the supply of products in terms of this Lease and distribution thereof by the Lessee to consumers will at all times be governed by the CPA which seeks to protect consumers and in doing so places significant power in the hands of those consumers with respect to product liability. Accordingly, the CPA requires all parties in the supply chain to take all reasonable precautions both in bringing the product to market and through provision of new consumer rights after purchase;
- (d) the conduct of this Lease by the Lessee, particularly insofar as the Lessee interfaces with the consumer shall be subject to the CPA and highest levels of responsibility and integrity.

44.2 Obligations and warranties of the Lessee

- (a) In addition to any other obligations and/or warranties contained in this Lease, the Lessee hereby undertakes and warrants that it shall at all times during the currency of this Lease -
 - (i) ensure all persons employed by it have the skills, expertise and experience necessary to carry their obligations in terms of the Business;
 - (ii) conduct the Business diligently and in accordance with the highest standards of professionalism displaying good faith and honesty to the Lessor;
 - (iii) ensure that any agent which it may use in the procurement of any other goods and services shall comply fully with all the applicable Laws relating to such goods and services and the Lessee hereby indemnifies and holds the Lessor harmless against any damages, loss or harm which the Lessor may suffer as a result of its failure to comply with any such Laws;
 - (iv) expressly state to consumers, any hazard and/or potential risk in the use of the Lessor's Products will be expressly stated by way of signage approved by the Lessor;
 - (v) conduct its business fairly and ethically and ensure that its employees are treated with dignity and respect and operate in a safe environment;
 - (vi) be in possession of an up to date version of the CPA and the regulations thereunder, and will at all times be familiar with the contents and stipulations thereof and comply with the CPA and regulations;

- (vii) be responsible for having relevant complaint policy in place for purposes of complaints, returns, refund and monitoring (by way of satisfactory record keeping) as required by the CPA;
- (viii) refrain from making or conducting or procuring any false advertising or misleading claims;
- (ix) comply with all necessary instructions in respect of the use, storage, sale and distribution of the Lessor's Products and petroleum;
- (x) procure and maintain relevant and sufficient insurance, in terms of clause 29;
- (xi) advise the Lessor in writing immediately upon becoming aware of any claim in respect of the Lessor's Products and/or upon return of any Lessor's Products to it by consumers;
- (xii) train its employees to properly advise consumers in respect of the Lessor's Products;
- (xiii) stipulate specifications and quality requirement to suppliers of any other Lessor's Products to it;
- (xiv) refrain from representing or deceiving any consumer in any manner whatsoever regarding any warranties or the Lessor's Products sold to the consumer.

(b) The Lessee acknowledges and agrees that -

- (i) failure by it to comply with the provisions of this clause (a) shall constitute a contravention of the CPA and the Lessee indemnifies the Lessor in respect of any loss incurred by it as a result of non-compliance;
- (ii) it is fully cognisant of any relevant Law that is relevant to the promotion, advertisement, sell and distribution ("dealings") of the Lessor's Products;
- (iii) it will be compliant with the CPA in respect of all dealings with the Lessor's Products;
- (iv) it will have all necessary licences, certificates, authorisations and consents required under the Laws of the Republic of South Africa or under any other applicable jurisdiction for dealings in respect of the Lessor's Products;
- (v) it will comply with all legal requirements and terms and conditions of all licences, certificates, authorisations and consents required for dealings in respect of any goods that it may receive or sell;
- (vi) it shall at all times comply with the overriding business considerations of the Lessor;
- (vii) it shall ensure that upon the delivery of any of the Lessor's Products, possession or use of such Lessor's Products by the consumer shall not be a breach of any Law;
- (viii) in respect of any other Lessor's Products or services purchased or utilised by it ensure that the supplier thereof is a reputable and reliable source;

- (ix) ensure that accurate written records are kept of all sales of the Lessor's Products for product traceability and other requirements in terms of applicable Law;

44.3 Indemnity

- (a) The Parties acknowledge that in terms of the section 61 of the CPA, they may be jointly and severally liable for any Harm, caused wholly or partly as a consequence of -
 - (i) supplying any unsafe goods; or
 - (ii) a product failure, defect or hazard in any goods; or
 - (iii) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods.
- (b) The Lessee hereby indemnifies and holds harmless the Lessor from and against and any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by the Lessor as a result of or arising out of any Harm alleged or proven by a consumer or any other person contemplated in section 4(1) of the CPA.
- (c) The Indemnity referred to in clause (b) above will be excluded in circumstances where:
 - (i) the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation;
 - (ii) the alleged unsafe product characteristic, failure, defect or hazard -
 - (1) did not exist in the goods at the time they were supplied by the Lessor to the Lessee; or
 - (2) the claim for damages is prescribed as contemplated in section 61(4)(d) of the CPA.
- (d) The Lessor, in addition to any other exclusions from liability to which it may be entitled to pursuant to the provisions of section 61(4) of the CPA shall not be liable in respect of any Harm caused by the goods where the Lessee does not sell the Lessor's Products in the same condition in which they were received by the Lessee or alters, tampers with or misuses any of the Lessor's Products supplied by the Lessor to the Lessee.

44.4 Status of obligations and indemnity

To the extent that the provisions contained in this clause 43.2 amount an amendment of any other agreement presently in existence between the Lessee and the Lessor, the Parties hereby agree to such amendment which shall be deemed to be incorporated by reference therein and form part thereof.

45. CONDITIONS RELATING TO LICENCES

- 45.1 The rights granted to the Lessee under this Lease shall be enforceable only for as long as the licences required in respect of the Premises and/or conduct of Business by the Department of Energy or any other authority having jurisdiction, shall have continued to be of force and valid.

45.2 In the event that the licences granted by the Department of Energy and which are necessary for the operation of the Business on the Premises are revoked, then the Lessor shall not be obliged to supply Petroleum Products to the Lessee and shall be entitled to cancel this Lease with immediate effect.

45.3 In the event that this Lease is terminated or cancelled for any reason whatsoever other than the effluxion of time, the Lessee hereby agrees and undertakes to surrender its retail and site licences as issued in terms of the Petroleum Products Act, by the Department of Energy to the Lessor within 3 (three) days' written notice requesting surrender. The Lessee hereby undertakes to sign all documents necessary to give effect to the surrender by it of its licence.

46. ANTI-CORRUPTION OBLIGATION

46.1 The Lessor has a zero tolerance policy towards bribery and corruption, including, but not limited to, providers of services to the Lessor, its employees or business partners and facilitation payments/grease payments. The Lessee will comply with all applicable anti-bribery and corruption and anti-money laundering laws and regulations and, in any event, will not and will procure that its employees and service providers (including its sub-contractors, agents and other intermediaries) will not offer, give or agree to give any person whatsoever (including, but not limited to, private individuals, commercial organisations and public officials) ("Person"), or solicit, accept or agree to accept from any Person, anything of value, either directly or indirectly, in connection with this Lease in order to obtain, influence, induce or reward any improper advantage ("the Anti-Corruption Obligation").

46.2 The Lessee shall on an ongoing basis:

- (a) immediately disclose in writing to the Lessor details of any breach of the Anti-Corruption Obligation;
- (b) on request, use its best endeavours to co-operate with the Lessor to ensure and monitor compliance with the Anti-Corruption Obligation; and
- (c) make clear, in its dealings connected to the Lessor, that it is required to act, and is acting, in accordance with the Anti-Corruption obligation.

46.3 The Lessor shall have the right to terminate this Lease or suspend all further services and payments with immediate effect if the Lessor reasonably believes that the Anti-Corruption Obligation has been breached or if the Lessor reasonably believes that the Lessee, its shareholders, owners or affiliates are designated as a Restricted Party. A "Restricted Party" is any person identified from time to time by a government or legal authority under applicable trade sanctions, export controls, anti-money laundering, non-proliferation, anti-terrorism and similar laws as a person with whom trade or financial dealings and transactions by the Lessor and/or its affiliates are prohibited or restricted.

46.4 The Lessee agrees and acknowledges that the Lessor itself or through its duly appointed representatives, may inspect and audit any and all books, records and accounts of the Lessee relating to the Lessee's compliance with the Anti-Corruption Obligation and make copies of requested books, records and accounts at the Lessor's expense.

46.5 All payments by the Lessor to the Lessee shall be made in accordance with the payment terms specified in this Lease. In the absence of any such specific payment instructions elsewhere in this Lease, payments by the Lessor to the Lessee shall only be made by cheque or wire transfer to a bank account of the Lessee in the country in which the Lessee is incorporated or where it has its head office, or to its office in the

Republic of South Africa, details of which shall be given by the Lessee to the Lessor in writing. Such notification shall be deemed to constitute a representation and warranty that the bank account so notified is owned solely by the Lessee and that no person other than the Lessee has any ownership of or interest in such account.

- 46.6 The Lessee shall provide the Lessor, upon written request, for any and all information or documentation required by the Lessor in terms of the Lessor's counter-party due diligence processes and policies and should the Lessee fail to provide the Lessor with the relevant information or documentation requested by the Lessor or within the time frames required by the Lessor, then the Lessor shall be entitled, without prejudice to any of its rights in terms of this Lease to cancel this Lease on 7 days' notice to the Lessee.

47. UNDERTAKING BY SHAREHOLDERS / MEMBERS/ TRUSTEES/ BENEFICIARIES OF THE LESSEE

- 47.1 It is recorded that the Lessee being a Company, Close Corporation or Trust, the shareholding, members' interest or beneficial interest in the Lessee is as follows, at the time of concluding this Lease:

NO.	SHAREHOLDER/MEMBER/ BENEFICIARY	NO. OF SHARES/ PERCENTAGE MEMBERS' INTEREST/ BENEFICIAL INTEREST
1.	Warren Cedric Rorke ID [REDACTED] Novar Group (Pty) Ltd	100%

- 47.2 The shareholders or members or trustees above, as the case may be, by signing this Lease hereby agree to bind themselves to the provisions of clause 24, 31 and 34 hereof.

48. DATA PRIVACY AND PROTECTION

- 48.1 For purposes of this clause 48

- (a) "Data" means any data supplied, stored, collected, collated, accessed or processed by or for the benefit of the Lessor or any customer on site, including personal information, as defined in the Protection of Personal Information Act, 2013 and any applicable legislation in South Africa and/or in any other jurisdiction where the Services and/or Products are provided;
- (b) "Confidential Information" means, in relation to either Party, all information (regardless of nature, type or form) that is (a) not publicly known, (b) may reasonably be regarded as being sensitive to the Party concerned, including in circumstances where that Party communicates such sensitivity to the other Party and (c) by its nature or content, any information that ought reasonably to be identifiable as confidential and/or proprietary to the Party disclosing such information;

- 48.2 The Lessee acknowledges that in carrying out its obligations in terms of this Lease, the Lessee may be exposed to the Data of the Lessor and/or customers.

- 48.3 The Parties specifically record that all Data provided by the Lessor to the Lessee, or to which the Lessee may be exposed, shall constitute Confidential Information.

- 48.4 The Lessee warrants and undertakes in favour of the Lessor that:

- (a) It shall at all times strictly comply with all applicable legislation and with all the provisions and requirements of the Lessor's Data protection policies and procedures (including encryption standards) in force, from time to time, advise the Lessee in writing, or which may be required by any Laws, whether within the Republic of South Africa or elsewhere in the world.
- (b) it shall not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Data for any purpose other than with the express prior written consent of the Lessor.
- (c) It shall only process the the Lessor Data in accordance with the Lessor's written instructions.
- (d) It shall ensure that all its systems and operations which it uses, including all systems on which Data is copied, compiled, collected, collated, processed, mined, stored, transmitted, altered or deleted or otherwise used, shall at all times be of a minimum standard required by Law and further be of a standard no less than the standards which are in compliance with the international best practice for the protection, control and use of Data.
- (e) It shall immediately notify the Lessor as soon as possible if there is un-Lawful access to or Loss of Data.
- (f) It shall immediately provide such the Lessor customer information to the Lessor as the Lessor may reasonably require so as to enable the Lessor to comply with the rights of individuals under applicable data protection Laws, or any information required by the data protection authority.
- (g) It shall not under any circumstances share Data with any of its service providers without the Lessor's prior written permission first having been had and obtained.
- (h) It shall at all times allow the Lessor reasonable access to enable the Lessor to audit the Lessee's data protection measures in relation to any Data.

49. IMPLEMENTATION AND PARTICIPATION IN LOYALTY SCHEMES

- 49.1 The Lessor shall be entitled from time to time to introduce any Scheme to be run from the Premises. It being the intention of the Lessor to increase the number of patrons or customers at the Leased Premises through the introduction of any such Scheme which will ultimately benefit the Lessee.
- 49.2 The Lessee recognises the intention of the Lessor in introducing such Schemes and hereby agrees to participate in any and all Schemes introduced by Lessor from time to time, and to comply with all aspects of such Schemes.
- 49.3 The Lessee and its employees shall participate in the any Loyalty Scheme in terms of Annexure M provided that they have completed any training courses which are required by the Lessor, to the Lessor's satisfaction.

50. CONFLICT OF INTEREST

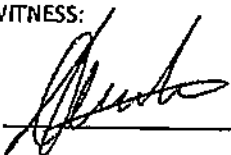
- 50.1 The Lessee shall disclose forthwith any direct or indirect, whether personally or through its shareholders, directors or members if he has or may have any actual or potential interest for the duration of this Lease which may cause any conflict of interest to arise and shall disclose the nature of this material, financial or other interest.

- 50.2 The Lessee shall not engage in any conduct that would by its nature be in conflict with the obligations arising from this agreement.
- 50.3 Any failure by the Lessee to comply with clause 50.2 shall constitute a material breach of this Lease which shall enable the Lessor to cancel this Lease immediately and without prejudice to any other rights which it may have in terms of this Lease or In Law.

Handwritten signature or initials in the bottom right corner of the page.

SIGNED at WATERFRONT on this 18th day of OCTOBER 2019

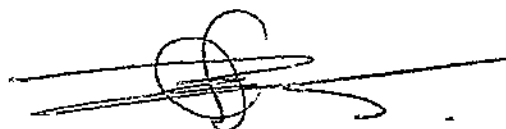
AS WITNESS:

1. 

Full name of witness

2. _____

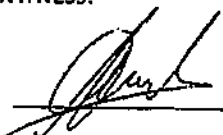
Full name of witness



BP SOUTHERN AFRICA PROPRIETARY LIMITED
herein represented by.

SIGNED at WATERFRONT on this 18th day of OCTOBER 2019


AS WITNESS:

1. 

Full name of witness

2. _____

Full name of witness



THE LESSEE

ANNEXURE L: PROOF OF OWNERSHIP OF THE PREMISES OR WRITTEN CONSENT



Inspired by you

Pick n Pay Western Cape
Western Cape Building
101 Rosmead Avenue
Kenilworth
7708

19 July 2011

Dear Sir / Madam

Letter confirming right to occupy the premises

This letter serves to confirm that PICK N PAY RETAILERS (PROPRIETARY) LIMITED Registration number 1973/004739/07 holds a lease agreement with BP SOUTHERN AFRICA (PROPRIETARY LIMITED) LIMITED registration number 1924/002602/06 and has been allocated rights to occupy the premises on erf 65277, Cnr Rosmead & Wetton Road, Kennilworth, 7848.

We confirm that NOVAR GROUP (PROPRIETARY) LIMITED Registration number 2018/379854/07 holds a lease agreement with PICK N PAY RETAILERS (PROPRIETARY) LIMITED for which same rights to occupy the premises in question are inherited.

Randolph Leary
(Franchise Business Manager)

Western Cape

A Division of Pick n Pay Retailers (Pty) Ltd. REG. NO. 1973/004739/07.

Directors: G. M. Ackerman (Non-Executive Chairman), J. G. Ackerman, S. D. Ackerman-Berman, N. P. Badminton, A. Jakoet.

Pick n Pay Office Park, 101 Rosmead Avenue, Kenilworth 7708, PO Box 23087, Claremont 7735, South Africa.
Tel (021) 658-1000, Fax (021) 797-6595 (Int. + 27). Website www.picknpay.co.za

Divisional Directors: A. Hamdulay (General Manager), J. van Vuuren (Corporate General Manager), L. Dyer, S. Green, B. Gregson, J. L. Lombard, J. MacMillan, I. H. H. van Poucke.

ANNEXURE M: COMPANY REGISTRATION DOCUMENTS

**Certificate issued by the Commissioner of Companies & Intellectual
Property Commission on Thursday, October 25, 2018 at 22:53**



**Companies and Intellectual
Property Commission**

a member of the dti group

COR14.3: Registration Certificate

Registration Number: 2018 / 379854 / 07

Enterprise Name: NOVAR GROUP

ENTERPRISE INFORMATION

Registration Number 2018 / 379854 / 07

Enterprise Name NOVAR GROUP

Registration Date 03/08/2018

Business Start Date 03/08/2018

Enterprise Type Private Company

Enterprise Status In Business

Financial Year End February

Addresses

POSTAL ADDRESS

10 STIRLING STREET
LEMOENKLOOF
PAARL
WESTERN CAPE
7646

ADDRESS OF REGISTERED OFFICE

10 STIRLING STREET
LEMOENKLOOF
PAARL
WESTERN CAPE
7646

ACTIVE MEMBERS / DIRECTORS

Surname and First Names

Type

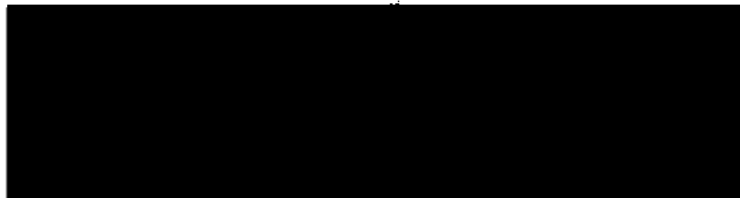
ID Number /
Date of Birth

Appointment
Date

Addresses

RORKE, WARREN CEDRIC

Director



Certificate issued by the Commissioner of Companies & Intellectual
Property Commission on Thursday, October 25, 2018 at 22:53



Companies and Intellectual
Property Commission
a member of the dti group

Notice of Incorporation

COR 14.1A

Registration Number: K2018378854
Enterprise Name: NOVAR GROUP



Tracking Number: 9127505386

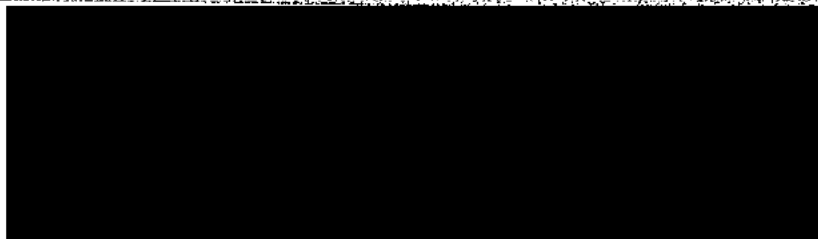


Customer Code: WAR119

INITIAL DIRECTOR DETAILS

Full Name	Occupation	ID Number / Date of Birth & Country	Appoint. Date	Cellphone Number	Address
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RORKE, WARREN CEDRIC



*The incorporators confirm that each person named above has consented to being
appointed in terms of section 66(7)(b) as a director of the company, whose Memorandum
of Incorporation is attached.*





1 April 2021

To whom it may concern

ZONING SCHEME EXTRACT
City of Cape Town Municipal Planning By-Law, 2015

On the date reflected above, Council's records indicated the property(ies) listed below to be zoned for the following purposes:

Property description	Erf 65273 , KENILWORTH
Physical address	71 WETTON ROAD
Base zoning	General Business 1
Subzoning	GB1
Overlay zoning (if applicable)	None
Primary land uses permitted	See attached extract from the Development management scheme
Other previously approved use rights (if any)	Yes, see attached.
Road widening / new road schemes (if any)	None

The following must be noted when reading the zoning extract:

- The above zoning is subject to various development parameters and land use restrictions which are contained in the Development Management Scheme, a copy of which is either attached or available on request at your nearest district planning office.
- This document is provided for information purposes only.
- It is further noted that the above information doesn't necessarily include reference to all previous land use approvals, restrictions, exclusions, departures or may not reflect lapsing of approvals. The reader is advised to also check the records of any other previous approvals, consents, exclusions, departures granted from the zoning scheme regulations or current Development Management Scheme or whether an approval not exercised has lapsed as well as the title deed for other restrictions that might impact on the development of the property.
- Use of the property in accordance with the above specified zoning does not exempt the owner/occupier from compliance with any other legal or statutory requirement affecting the property.

Yours faithfully

for **DIRECTOR: DEVELOPMENT MANAGEMENT**

**ANNEXURE N: CERTIFIED IDENTITY
DOCUMENT**

GEREGISTREERDE WOON- EN POSADRES

1. Bewaar die bewys van u GEREGISTREERDE WOON- EN POSADRES in hierdie sakkie.

2. Indien u van adres verander het, of indien besonderhede van u huidige adres, soos straatnaam en/of nommer, anders verander het, moet u die **NOTISIE VAN KENNISGEWING VAN ADRESVERANDERING** wat in hierdie sakkie agter in die identiteitsdokument is, gebruik word om die verandering aan te meld en moet dit ingedien word by of aan 'n werksaam aan die hantse streek / distrikkantoor van die DEPARTEMENT VAN BINNELANDSE SAKE.

REGISTERED RESIDENTIAL AND POSTAL ADDRESS

1. Keep the proof of your REGISTERED RESIDENTIAL AND POSTAL ADDRESS in this pocket.

2. If you have changed your address, or if particulars of your present address, e.g. name of street and/or street number, etc., have been changed, the **NOTICE OF CHANGE OF ADDRESS** form in the pocket at the back of the identity document must be used to report the change and it must be handed in at or posted to the nearest regional/district office of the DEPARTMENT OF HOME AFFAIRS.

RORKE

VOORNAME/FORENAMES
WARREN CEDRIC

GEBORTEDISTRIK OF LAND / DISTRICT OR COUNTRY OF BIRTH
SWAZILAND

GEBORTE DATUM / DATE OF BIRTH

ISSUED BY AUTHORITY OF THE DIRECTOR-GENERAL HOME AFFAIRS

SUID-AFRIKAANSE POLISIE DIENS

RIETGAT SAPS

2021-07-24

C.S.C.

SOUTH AFRICAN POLICE SERVICE

DRIVING LICENCE

CARTÃO DE CONDUÇÃO

HC RORKE

ID No. 0027205108351082

Birth 10/05/1972

Restriction 0,0

South African Police Service

SUID-AFRIKAANSE POLISIEDIENS

COMMUNITY SERVICE CENTRE

26 JUN 2018

PAARL

SOUTH AFRICAN POLICE SERVICE

EK CERTIFISEER DAT HIERDIE DOKUMENT 'N WARE AFDRUK (AFSKRIJF) IS VAN DIE OORSpronKlike DOKUMENT WAT ALN MY VIR WAARNEMING VOORGELIC IS. ILS SERTIFIEER VERDER VERDER DAT, VOLGENS MY WAARNEMING, DAAR NIE 'N WYSGING OF VERANDERING OP DIE OORSpronKlike DOKUMENT AANGEBRING IS NIE.

I CERTIFY THAT THIS DOCUMENT IS A TRUE REPRODUCTION (COPY) OF THE ORIGINAL DOCUMENT WHICH WAS PRESENTED TO ME FOR AUTHENTICATION. I FURTHER CERTIFY THAT, FROM MY OBSERVATIONS, AN AMENDMENT OR A CHANGE WAS NOT MADE TO THE ORIGINAL DOCUMENT.

MACSHOMMER / FORCE NUMBER **WAB97**

RANG / RANK **WO**

NAAM IN DRUKSKRIJF / NAME IN PRINT **Aen Schout**

**ANNEXURE O: PROOF OF PAYMENT OF
LODGEMENT FEES**



NOTIFICATION OF PAYMENT

To Whom It May Concern:

First National Bank hereby confirms that the following payment instruction has been received:

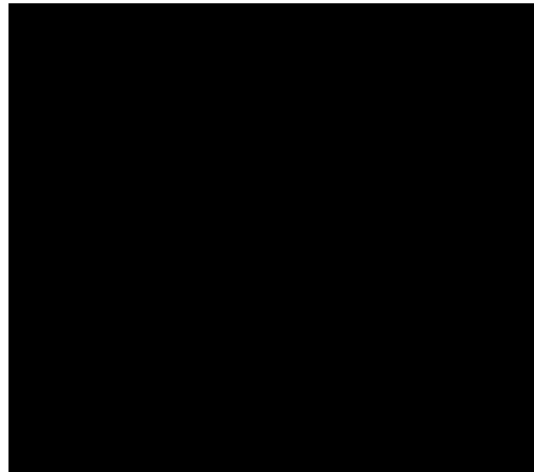
Date Actioned
Time Actioned
Trace ID

Payer Details

Payment From
Cur/Amount

Payee Details

Recipient/Account No
Name
Bank
Branch Code
Reference



: Bp Rosemead/pnp Ex

END OF NOTIFICATION

To authenticate this Payment Notification, please visit the First National Bank website at fnb.co.za, select the "Verify Payments" link and follow the on-screen instructions.

Our customer (the payer) has requested First National Bank Limited to send this notification of payment to you. Should you have any queries regarding the contents of this notice, please contact the payer. First National Bank Limited does not guarantee or warrant the accuracy and integrity of the information and data transmitted electronically and we accept no liability whatsoever for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from the transmission of the information and data.

ANNEXURE P: ZONING CERTIFICATE

3 Victoria Road
Plumstead 7800
Private Bag X5
Plumstead 7801
Ask for: Mrs J Leslie
Tel: 710-8262
Fax: 710-8283
E-Mail: jleslie@spm.org.za
Ref: /jl
Filename:

3 Victoria Road
Plumstead 7800
Private Bag X5
Plumstead 7801
Cela: Nksh J Leslie
Umnxeba: 710-8262
Ifeksi: 710-8283
iE-Mail: jleslie@spm.org.za
Iref: /jl
I:\APPS\Core\pforms\LETTER.WPD

Victoriaweg 3
Plumstead 7800
Private Bag X5
Plumstead 7801
Vra vir: Mav J Leslie
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CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

South Peninsula Administration
URBAN & ENVIRONMENTAL SERVICES
Land Use Management — Plumstead

2002-10-10

CORE PROPERTY DEVELOPMENT AND INVESTMENT
218 MAIN ROAD
CLAREMONT
7700

Dear Mr G. Moore

APPLICATION FOR COUNCIL'S CONSENT FOR RESTAURANT USE : ERF 65273
KENILWORTH

Your application dated 2002-04-10 refers. Council notified surrounding property owners, the Kenilworth Gibson Road Area Residents Association and the Ward Councillor of your application, and no objections were received.

In terms of the powers delegated to the Executive Director : Urban and Environmental Services (South Peninsula Administration), your application for Council's Consent to permit the operation of two restaurants on the property, is hereby approved, subject to the conditions contained in attached Annexure A. Please note that attached Plans A, B (i) and (ii) and C (i) and (ii) which indicate the extent of the restaurant use shall form part of the Site Development Plan approval pertaining to the property concerned.

Your faithfully


for EXECUTIVE DIRECTOR : URBAN AND ENVIRONMENTAL SERVICES (SOUTH
PENINSULA ADMINISTRATION)

ANNEXURE A

File reference : LUM/00/65273

In this annexure :

"Council" means the City of Cape Town.

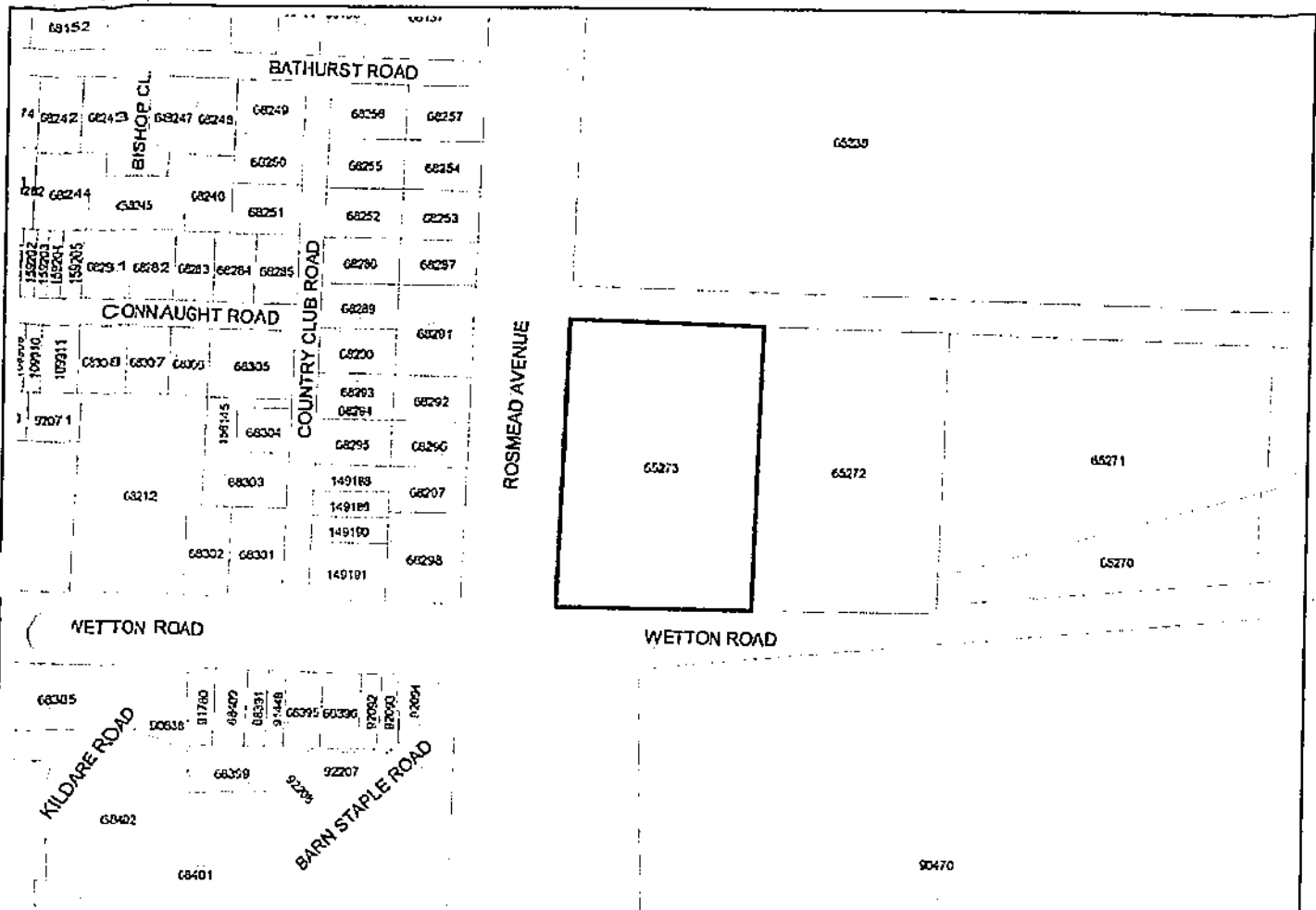
"The Owner" means the registered owner of the property.

"the property" means Erf 65273 Kenilworth.

"scheme regulations" has the meaning assigned thereto by Ordinance 15 of 1985

CONDITIONS OF CONSENT APPROVAL FOR RESTAURANTS : ERF 65273 KENILWORTH

1. Council's Consent to permit restaurant use on the property concerned shall be restricted to the two businesses trading in the name of Tambe's and Chello's . This approval shall not confer any land use rights on any other future businesses that may operate on the property concerned.
 2. The extent of the restaurant use shall be limited to those areas shown on attached plans A , B (i) and (ii) and C (i) and (ii), which shall form part of the Site Development Plan approval for the property concerned.
 3. No alcohol may be sold on the restaurant premises for which Council has granted its Consent in terms of this approval.
 4. The maximum number of seated patrons shall be restricted as follows :
 - Tambe's - 24 seated patrons
 - Chello's - 12 seated patrons
 5. Compliance with all requirements of the Health Directorate.
 6. No live music shall be permitted on the restaurant premises concerned.
 7. Should complaints be received in regard to the impact of the restaurant operations concerned, Council has the right to serve a notice on the owner of the property, calling on him/her to :
 - cease operating the restaurant(s) concerned within a specified time period; or
 - comply with the conditions set out in such notice, which may include a restriction of the hours of operation of the restaurant(s).
-



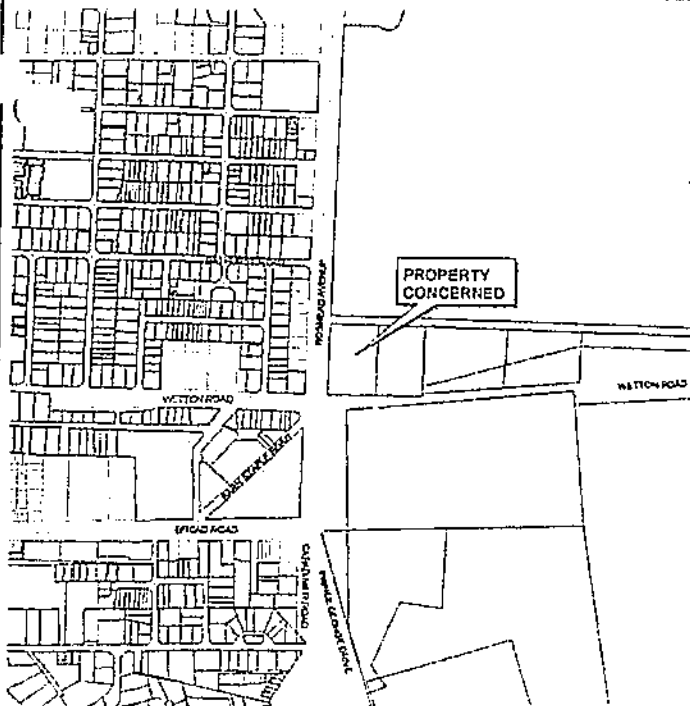
SCALE N.T.S

CITY OF CAPE TOWN SOUTH PENINSULA ADMINISTRATION

APPLICATION

ERF 65273, ROSMEAD AVENUE - KENILWORTH

APPLICATION FOR CONSENT TO PERMIT RESTAURANTS.



LOCALITY SKETCH

PROPERTY CONCERNED		PROPERTIES EXTENT	6830.66 m ²
EXISTING ZONE	COMMUNITY FACILITY USE		
PROPERTIES CONSULTED	○	COMMENTS RECEIVED	△
SUPPORT RECEIVED	✓	OBJECTIONS RECEIVED	×
GIS OPERATOR	CVBALLA	DATE	2002/08/05

FILE NO. LUM/00/65273/lmb PLAN NO. SPA-WYN-212

KENILWORTH
RACECOURSE



TO CLAREBOURNE

SERVICE LANE

VACANT FUTURE
DEVELOPMENT

CHILLI'S

STPX

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2A

1B

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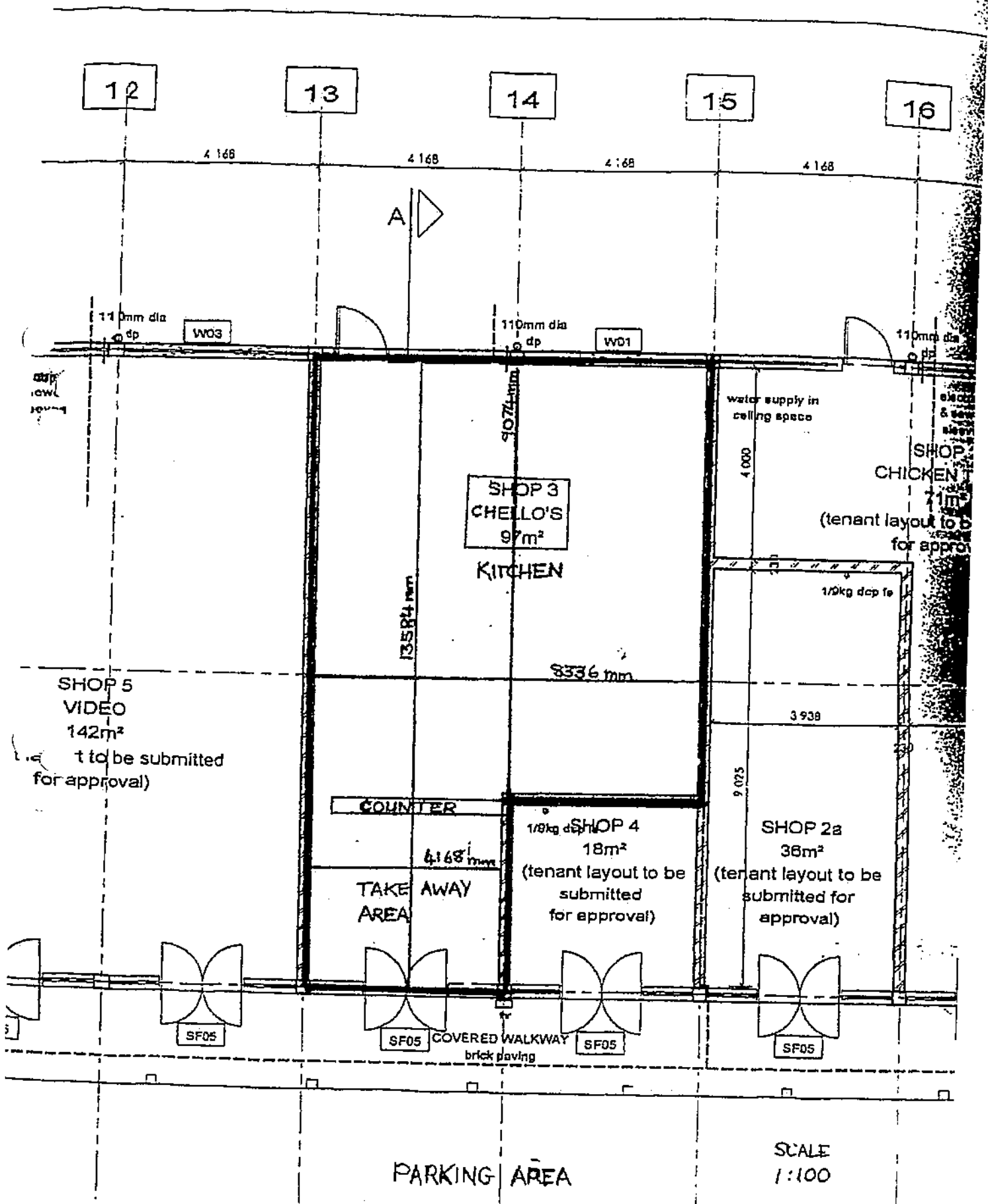
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PLAN B (1)

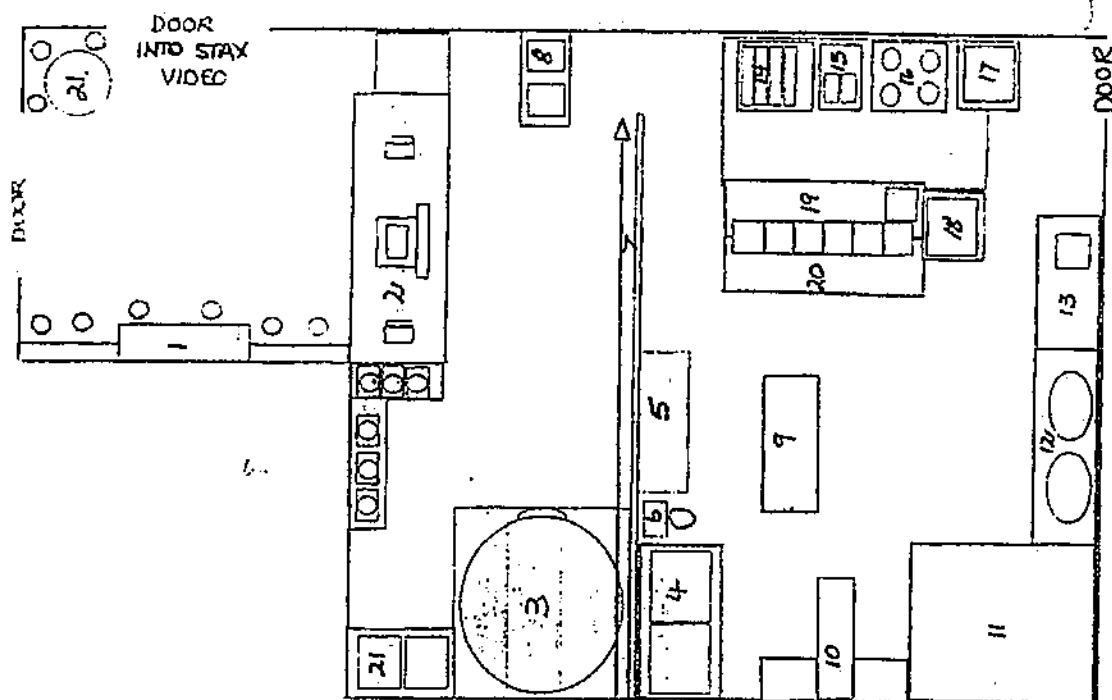
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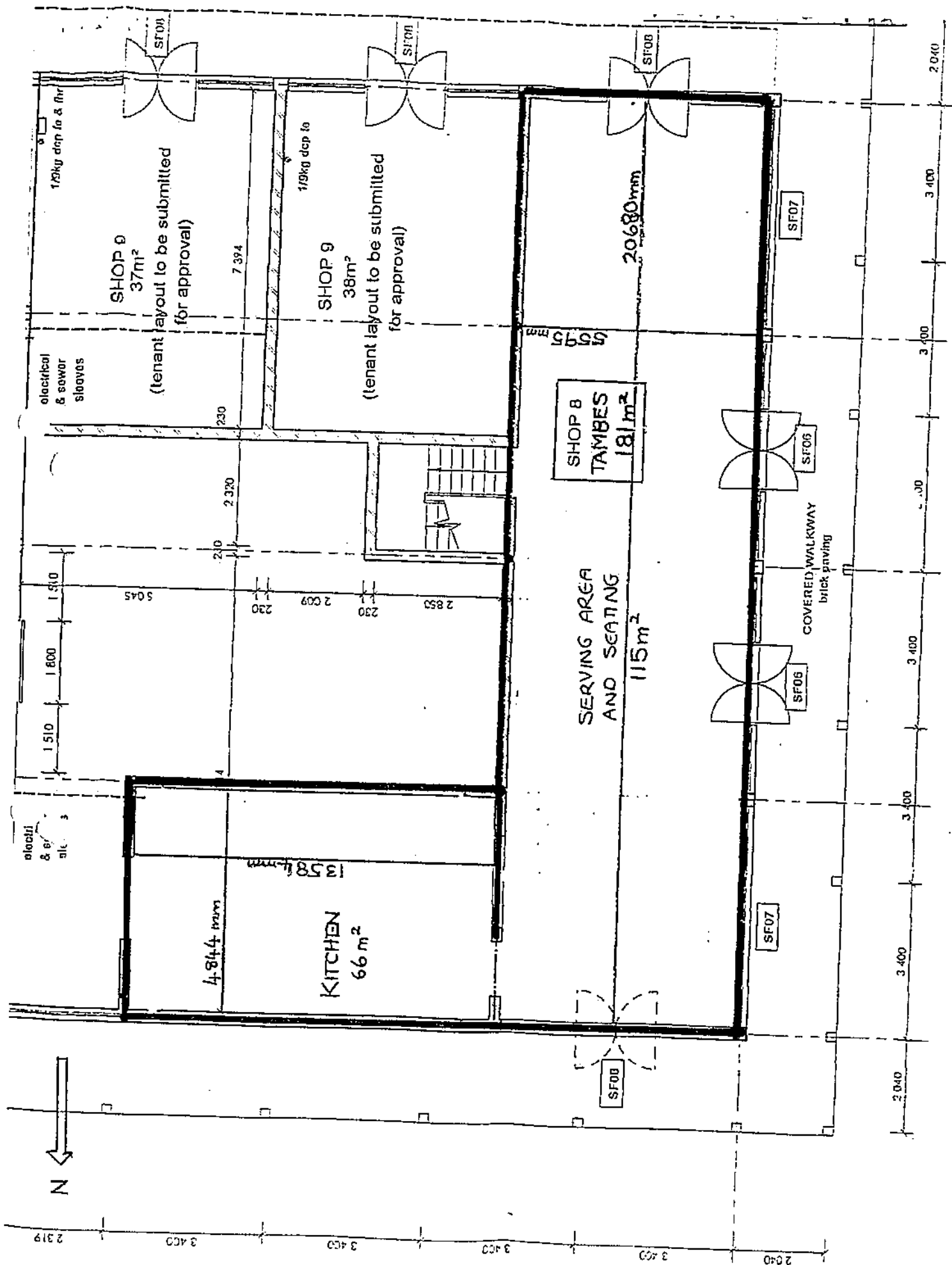


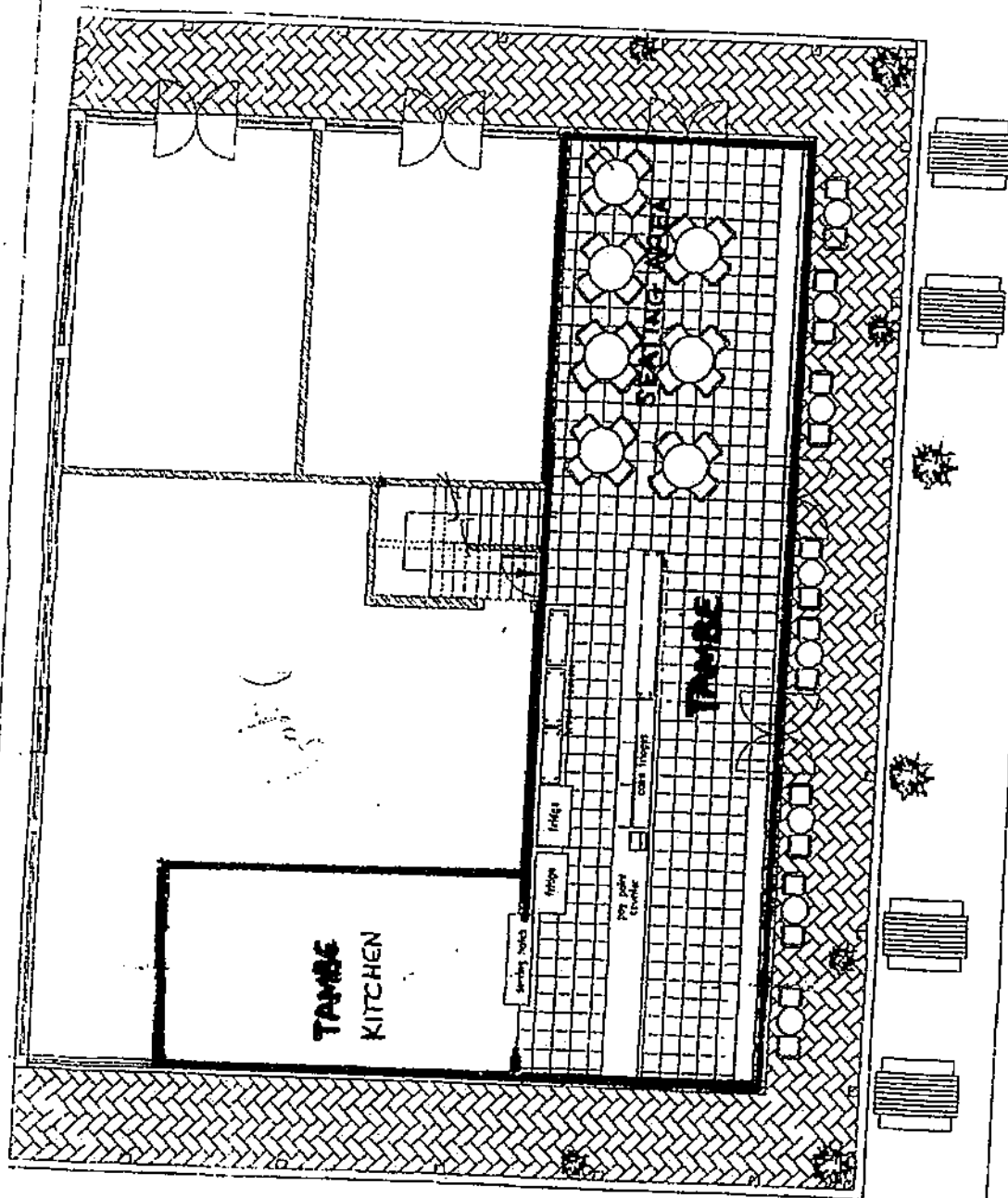
CHELLO'S KENILWORTH FLOORPLAN

PLAN D (11)

- 1 SIDE COUNTER
- 2 COUNTER
- 3 PIZZA OVEN
- 4 BULK FREEZER
- 5 UNDER COUNTER FRIDGE
- 6 DOUGH MIXER
- 7 DRY WALL
- 8 JUICE CHILLER
- 9 SS TABLE
- 10 GALVANISED RACK 4 TIERS
- 11 COLORROOM
- 12 DOUBLE BOWL SINK
- 13 SS TABLE + VEG CUTTER
- 14 6 BURNER GAS GRILLER
- 15 CHIP FRYER
- 16 GAS OVEN
- 17 PASTA FREEZER
- 18 CHIP FREEZER
- 19 + 20 2 X SS TABLES + MICRO OVEN
- 21 3 X ROUND TABLES + CHAIRS



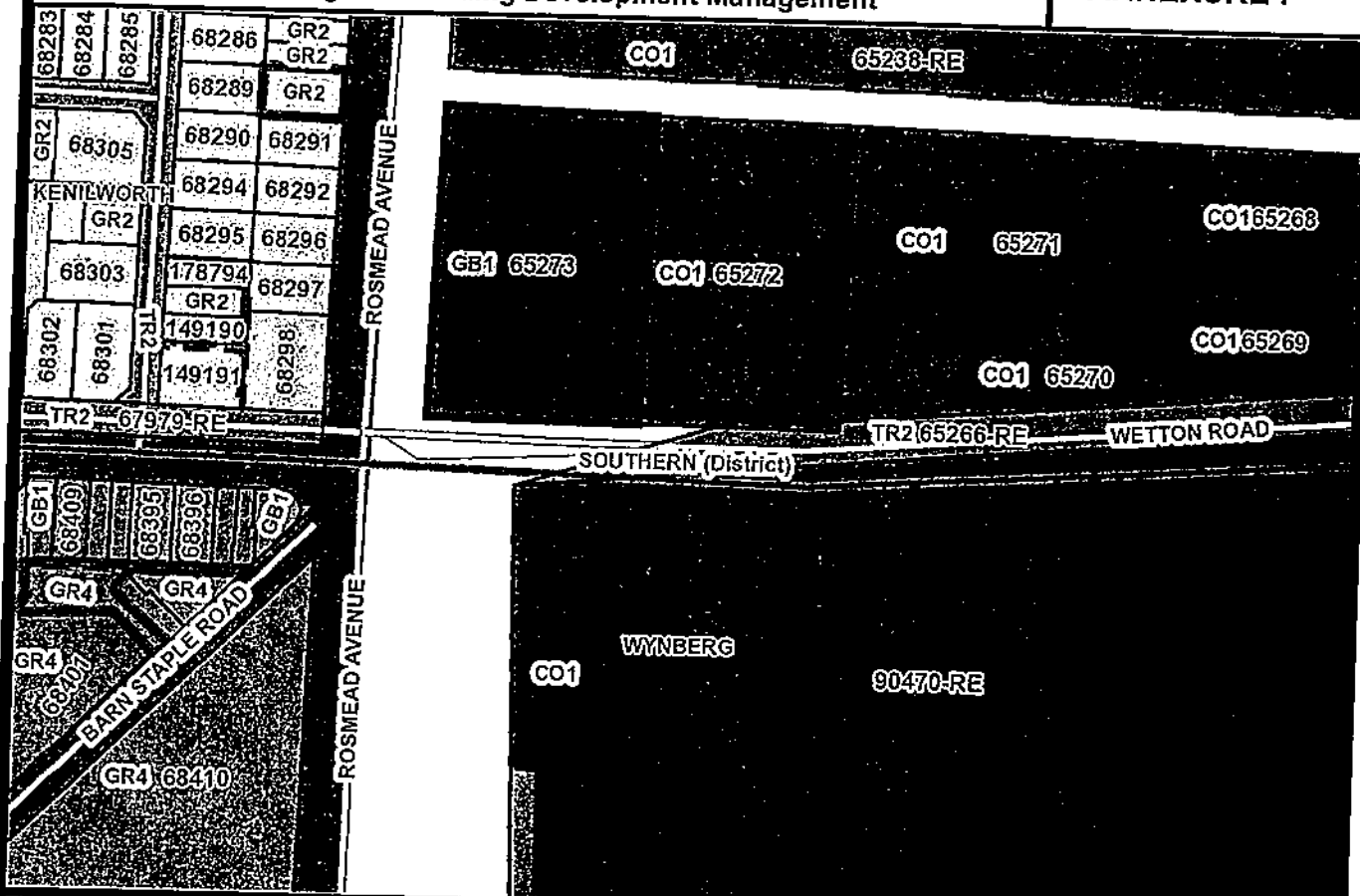




ZONING MAP

Planning and Building Development Management

ANNEXURE :



Zoning Legend

General Residential 2		GR2
Single Residential 1 : Conventional Housing		SR1
Transport 2 : Public Road and Public Parking		TR2
Local Business 2 : Local Business		LB2
Open Space 2 : Public Open Space		OS2
General Residential 4		GR4
General Business 1		GB1
Community 1 : Local		CO1

Erf: 65273

Allotment: CAPE TOWN

District: SOUTHERN

Suburb: KENILWORTH

Ward: 58

Sub Council: Subcouncil 20



1:2 422

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Date: Thursday, 01 April 2021

File Reference: ERF 65273 KENILWORTH

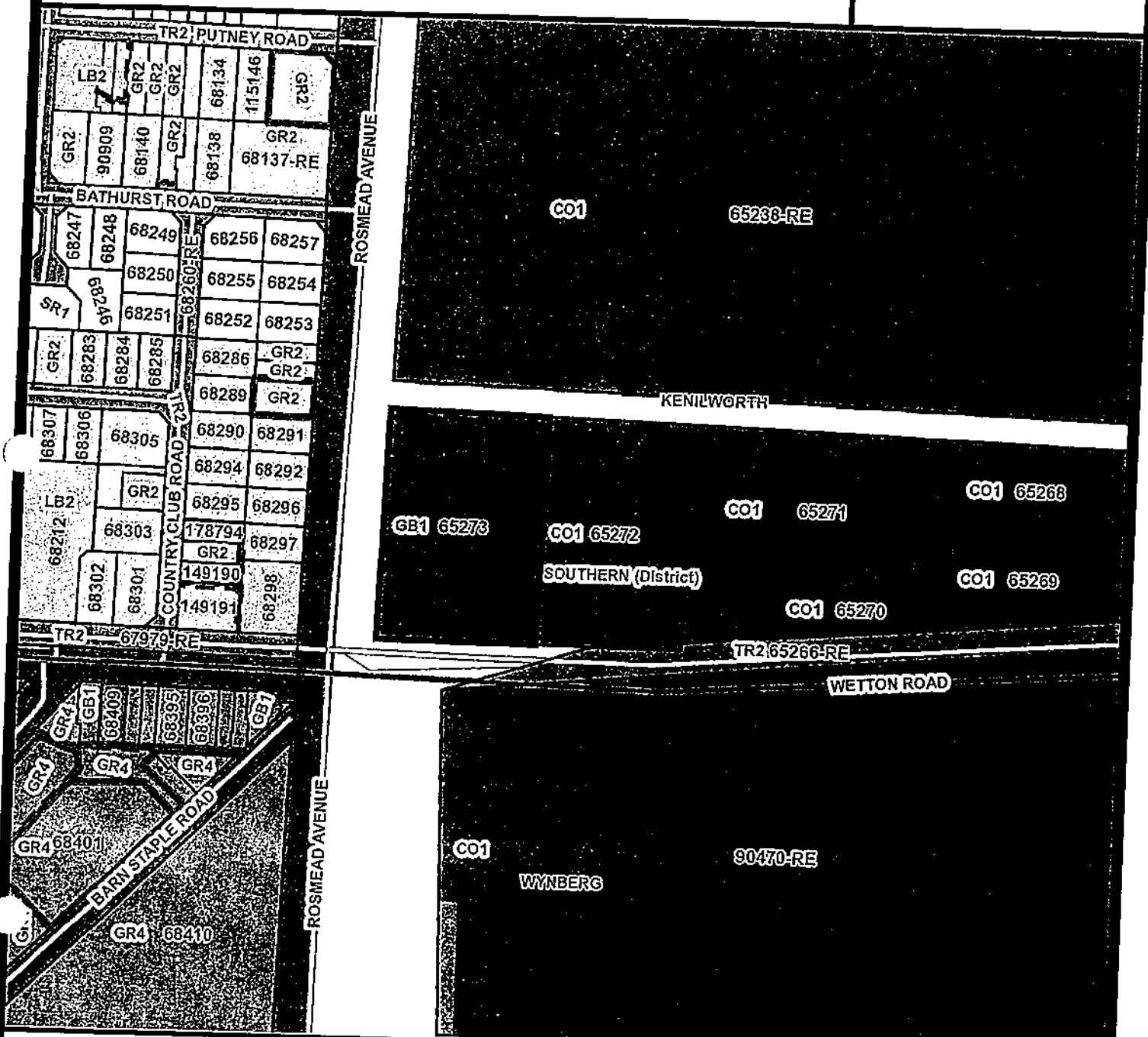


CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

ANNEXURE :



Overview

Erf: 65273

District: SOUTHERN

Allotment: CAPE TOWN

Suburb: KENILWORTH

Ward: 58

Sub Council: Subcouncil 20



1:2 422

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by:

Date:

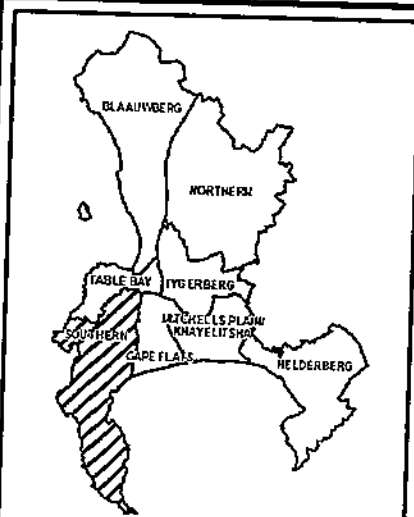
Thursday, 01 April 2021

File Reference: ERF 65273 KENILWORTH



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.



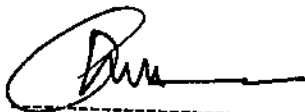
**ANNEXURE Q: RESOLUTION OF DIRECTORS TO
APPOINT FRUGAVISION LIQUOR CONSULTANT
TO ACT ON BEHALF**

**RESOLUTION OF THE DIRECTOR OF ULUNTU CROSSROADS (PTY) LTD
(REGISTRATION) NUMBER 2018/ 379854/ 07**

AT A MEETING HELD ON THIS 15 July 2021 AT BP ROSEMEAD

RESOLVED THAT:

1. Application is made at the Liquor Board of the Western Cape for a grocer's wine licence in the name of the company in respect of premises situated on the Erf 65277, Cnr Rosemead & Wetton Road, Kennilworth.
2. Frugavision Liquor Consultant is appointed to sign all documents for the purposes of this application.



Warren Rork