

**AGREEMENT OF LEASE\_RFP TP/2024/08/0003/75375/RFP**

AGREEMENT made and entered into by and between **TRANSNET SOC LTD** Registration No. 1990/000900/30 state owned company duly incorporated in terms of the Company laws of the Republic of South Africa and herein represented by \_\_\_\_\_ in his/her capacity as Chief Executive: Transnet Property (hereinafter referred to as “the LESSOR”)

**AND**

\_\_\_\_\_ Registration No \_\_\_\_\_,  
herein represented by \_\_\_\_\_ (Identity number \_\_\_\_\_) in  
his capacity as \_\_\_\_\_, being duly authorised thereto by a resolution of the  
Board of Directors dated \_\_\_\_\_ 20\_, a certified copy of which is annexed hereto  
(hereinafter referred to as the “LESSEE”).

## **AGREEMENT OF LEASE**

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## **WORK ON, OVER, UNDER OR ADJACENT TO RAILWAY LINES AND HIGH VOLTAGE EQUIPMENT**

1. GENERAL CONDITIONS AND SPECIFICATIONS – FORM E 7/2 WHEREBY IT IS AGREED AS FOLLOWS:

### 1. **HEADNOTES**

The headnotes to the clauses of this Lease are inserted for reference purposes only and shall in no way govern or affect the interpretation of such clauses.

### 2. **DEFINITIONS**

2.1 In this Agreement, unless it is expressly stated to the contrary, the following expressions bear the meanings assigned to them:

2.1.1 **“LAND”** - the areas of undeveloped land being \_\_\_\_\_ indicated on Agreement plan No \_\_\_\_\_ attached hereto marked **Annexure 1** and signed by the parties as relevant hereto.

2.1.2 **“IMPROVEMENTS”** - all buildings, structures and services erected on or any other development of the LAND by the LESSEE in terms of the Development Brief, attached hereto marked Annexed.

2.1.3 **“PREMISES”** the LAND and IMPROVEMENTS.

2.1.4 **“GROSS MONTHLY RENTAL INCOME”** shall include the value of any consideration received by the LESSEE in respect of the use and exploitation of any portion of the PREMISES and shall include income derived from sub-letting of the PREMISES.

2.1.5 **“A SUB-LEASED PORTION”** of the PREMISES shall include any portion of the PREMISES sub-let or made available for use to a person, legal entity or otherwise.

2.1.6 **“MUNICIPALITY”** the City of Johannesburg Metropolitan Municipality.

2.1.7 **“THIS LEASE”** means the entire Lease entered into between the parties including all annexures which have been signed and/or initialled by the parties as relevant hereto.

### 3. **EXTENT OF LEASED AREA**

The LESSOR hereby leases to the LESSEE and the LESSEE hereby hires from the LESSOR certain LAND and IMPROVEMENTS, as it stands without any guarantee against latent or patent defects, being \_\_\_\_\_, situated in the \_\_\_\_\_, in extent approximately \_\_\_\_\_ (\_\_\_\_\_ ha), as indicated on the Agreement Plan annexed hereto.

### 4. **PERIOD OF LEASE**

4.1 The Lease shall commence on \_\_\_\_\_20\_\_ and terminate on \_\_\_\_\_20\_\_, unless earlier terminated by mutual agreement or otherwise in accordance with the succeeding provisions of this Lease.

4.2 The Lessee is hereby granted an option to renew this Lease Agreement for a further period of \_\_\_\_\_ (\_\_\_\_\_) years, on the same terms and conditions contained in this Lease Agreement, save that the rental and escalation rate shall be subject to review by the Lessor as per clause 5.2 below and all applicable clauses of this Lease Agreement.

4.3 In the event that the Lessee decides to exercise its option to renew the Lease Agreement, it shall do so by way of a written notice to that effect, delivered to the Lessor's Domicilium, and not later than 12 (Twelve) months prior to the expiry of the initial period of this Lease Agreement.

### 5. **RENTAL**

5.1 The minimum monthly rental in respect of the PREMISES excluding Value Added Tax, insurance, rates, taxes, charges or assessments, water and electricity, if applicable, shall be payable by the LESSEE to the LESSOR monthly in advance on or before the 7<sup>th</sup> Day of each calendar month, into the bank account of the Lessor:

5.1.1 For the period \_\_\_\_\_20\_\_ to \_\_\_\_\_20\_\_ (Initial \_\_\_\_\_ months of the Lease) no rental shall be payable ("Beneficial Occupation Period"). The Lessee shall be liable for payment of rental from the earlier of the following dates: Upon Expiry of the Beneficial Occupation Period or from the date upon which the Lessee starts operating from the Leased Premises and generates revenue.

5.1.2 For the period stated in 5.1.1, the Lessee shall be liable for Value Added Tax, insurance, rates, taxes, and any other charges or assessments levied by any competent authority on the Premises.

- 5.1.2.1 With effect from \_\_\_\_\_20\_\_ (\_\_\_ months from date of commencement of this Lease);

the minimum monthly rental payable by the LESSEE shall be \_\_\_\_\_ **Rand** (R\_\_\_\_\_ ) per month (exclusive of VAT), which rental shall be escalated **annually** with effect from \_\_\_\_\_ 20\_\_ by \_\_\_\_\_ **per centum** (\_\_\_%) for the remaining period of this Lease, reviewable every five (5) years as specified in Clause 5.2 hereof

OR

an income participation rental shall be payable in respect of the PREMISES based on \_\_\_\_\_ **per centum** (\_\_\_%) of the GROSS MONTHLY RENTAL INCOME as defined in Clause 2.1.4 hereof and Clause 1 of **Annexure 1**, Whichever is the greater.

- 5.2 In respect of each succeeding period of five (5) years or part thereof the **rental and escalation** per centum on the minimum monthly rental shall be agreed upon between the parties six (6) months prior to the expiration of each period of five (5) years. Should the parties fail to reach agreement on the rental and escalation per centum, the rental and escalation per centum will be finally determined on the same basis as specified in clause 2 of **Annexure 1** of this Agreement.
- 5.3 The income participation rental payable in terms of this Lease shall be payable within three (3) months of the end of each year of the Lease by the LESSEE to the LESSOR's bank account, accompanied by –
- 5.3.1 a statement of how the amount was calculated; and
- 5.3.2 an accredited Auditor's analysis and certificate.
- 5.4 The statement referred to in sub-clause 5.3.1 hereof shall inter alia, indicate the total gross rental income, as defined in clause 1 of Annexure 1 hereof, received by the LESSEE for the preceding accounting year.
- 5.5 For the purposes of sub-clause 5.3.2 hereof, the LESSOR will accept the LESSEE'S accredited Auditor's analysis and certificate.
- 5.6 Value Added Tax (currently fifteen per centum (15%)), calculated at the then prevailing rate, shall be payable simultaneously with any rental for the specific lease period by the LESSEE to the LESSOR.

## 6. ECONOMIC EMPOWERMENT

It is recorded that -

- 6.1.1 the conclusion of this Lease has been preceded by a set of negotiations initiated by the LESSEE;
- 6.1.2 in the evaluation of the proposal to Lease these Premises, the LESSOR considered its support of the Governments' Strategy for New Growth Path (NGP), and Broad Based Black Economic Empowerment Act (BBBEE Act); and
- 6.1.3 the LESSEE subscribes to the principles of NGP (NEW GROWTH PATH), NDP (NATIONAL DEVELOPMENT PLAN) and the BBBEE Act;
- 6.2 Pursuant to the provisions of Clause 6.1 and the implementation of its commitment to an empowerment programme, the LESSEE undertakes;
  - 6.2.1 in the development of the LAND,
    - 6.2.1.1 to employ and form alliances with smaller contractors to supplement the skills base currently employed by the LESSEE; and
    - 6.2.2.1 to empower entrepreneurs in line with Government Strategy.

## 7. MONITORING OF ECONOMIC EMPOWERMENT ACTIONS

- 7.1 **The** LESSEE shall during the construction period of the project furnish the LESSOR, on a monthly basis, with a report in writing giving full particulars, as to how and to what extent the principle of Black Economic Empowerment is being promoted and, on the progress, made in implementing the actions specified in the development proposal submitted by the LESSEE as listed under Clause 6.2 hereof. The report shall list and give particulars of the following aspects:
  - 7.1.1 Joint ventures/partnerships/associations/alliances entered between the LESSEE/ its professional team and emerging enterprises/previously marginalised individuals as a result of this project.
  - 7.1.2 Details of training and development of skills and the extent to which such skills are being transferred to emerging enterprises/previously marginalised individuals.
  - 7.1.3 The extent to which emerging construction enterprises are benefiting from the project through their involvement as sub-contractors to the main contractor.

- 7.1.4 A comprehensive list of suppliers from previously disadvantaged communities used in the supply of building material and construction equipment for the project.
- 7.1.5 A comprehensive list of the number of temporary jobs created during the construction phase of the project.
- 7.1.6 The empowering/upliftment of the broader community through the multiplier effect resulting from this business development and the wider benefits that will impact on the immediate community by virtue of the provision of amenities/infrastructure/services.
- 7.1.7 Any further actions implemented at the initiative of the LESSEE to promote the principle of Black Economic Empowerment made possible due to the development of the PREMISES.
- 7.2 Until being advised to the contrary by the LESSOR the LESSEE shall, after the construction phase of the project, furnish the LESSOR, on an annual basis, with a report in writing giving full particulars, as to how and to what extent the principle of Black Economic Empowerment is being promoted, and on the progress made in implementing the actions specified in the development proposal submitted by the LESSEE as listed under Clauses 7.2.1 to 7.2.4 hereof. This report shall list and give particulars of the following aspects:
  - 7.2.1 Joint ventures/partnerships/associations/alliances entered into between the LESSEE/its management team and emerging enterprises/ previously marginalised individuals through operational management of these PREMISES.
  - 7.2.2 Details of training and development of skills and the extent to which such skills are being transferred to emerging enterprises/previously marginalised individuals.
  - 7.2.3 A list of suppliers from previously disadvantaged communities used in the supply of goods and services to the LESSEE for retail to the general public on the PREMISES.
  - 7.2.4 A comprehensive list of the number of permanent jobs provided through operation of the development of the PREMISES.
  - 7.2.5 Any further actions implemented at the initiative of the LESSEE to promote the principle of Black Economic Empowerment which may become possible as consequence of the business activity on the developed PREMISES.



7.3 If in the opinion of the LESSOR, the LESSEE'S performance in any of the clearly quantifiable performance areas as stated in Clauses 7.2.1 to 7.2.4 hereof are considered to be below expectations, the LESSEE shall, if so, requested by the LESSOR, furnish its written explanation(s) as to the non-performance, with an indication of how it intends rectifying the situation.

7.4 Should the LESSEE, at any time during the duration of this Lease, be unable to furnish an acceptable explanation for the non-performance or not be willing to remedy the non-performance or not be able for whatever reason to perform fully in accordance with the declared performance criteria, the LESSEE shall, on request in writing by the LESSOR, which request shall state the non-performance or shortfall, deposit an amount equivalent to fifteen per centum (15%) of the applicable rental for the then current year with the LESSOR. This payment may be applied at the sole discretion of the LESSOR to remedy the unsatisfactory performance of declared Black Economic Empowerment undertakings.

**8. GENERAL TERMS OF LEASE**

The General terms of Lease and Development Brief all applicable to the PREMISES annexed hereto signed by the parties as relevant hereto, shall form an integral part of this Lease.

**9. NOTICES AND DOMICILIUM**

9.1 For the purpose of this Lease the parties choose domicilium citandi et executandi as follows:

**LESSOR:** Chief Executive:  
Transnet Property  
138 Eloff Street  
Braamfontein  
Johannesburg

**LESSEE:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9.2 Either party shall be entitled to change its domicilium from time to time, provided that any new domicilium selected shall be situated in the Republic of South Africa, shall be an address other than a box number and any such change shall only be effective upon receipt of notice in writing by the other party of such change.

- 9.3 All notices which are given by either party to the other in terms of this Agreement shall be presumed, until the contrary is proved, to have been received.
- 9.3.1 in the case of posting seven (7) days after the date of such posting, if posted by pre-paid registered post to the appropriate address as set out in clause 9.1 hereof or;
- 9.3.2 in the case of delivery by hand, to a responsible person at the domicile on the date of such delivery if delivered to the appropriate address as set out in clause 9.1 hereof;
- 9.3.3 in the case of despatch by fax, on the business day following the day in which the fax was dispatched.
- 9.3.4 in the case of sending by e-mail, on the business day following the day on which the e-mail was transmitted.

**10. AMENDMENT OR VARIATION OF LEASE**

This Agreement incorporates the entire agreement between the LESSOR and the LESSEE and no addition, amendment, cancellation or variation hereof shall be of any force or effect unless it is in writing and signed by both the LESSOR and the LESSEE, who hereby acknowledge that no representations or warranties have been made by either the LESSOR or the LESSEE nor are there any understandings or terms of this Lease other than those set out herein.

**11. SUSPENSIVE CONDITIONS**

It is a Suspensive Condition of this Agreement that this Lease will lapse should the development rights not be granted by the Local Authority within 24 (Twenty-Four) months from date of commencement of this Lease, or such extended period as may be agreed to by Parties in writing.

**12. REGISTRATION OF SERVITUDES**

The Parties hereby agree that a Praedial Servitude of Right of Way for Public Access and Municipal Services will be registered in favour of the PREMISES in order to grant access to the PREMISES and to provide Municipal services to the PREMISES. The costs thereof shall be paid by the Lessee.

THUS, DONE and SIGNED at \_\_\_\_\_ on

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**FOR AND ON BEHALF OF THE  
LESSEE**

Who warrants that he/she  
is duly authorised

THUS, DONE AND SIGNED at \_\_\_\_\_ on this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**FOR AND ON BEHALF OF THE  
LESSOR**

Who warrants that he/she  
is duly authorised

## **ANNEXURE 1**

### **TRANSNET SOC LTD**

#### **GENERAL TERMS OF LEASE APPLICABLE TO THE PREMISES**

- 1. DETERMINATION OF GROSS MONTHLY RENTAL INCOME**
- 1.1 Gross monthly rental income shall include the rental received by the LESSEE in respect of each sub-leased portion of the PREMISES or a market related rental in respect of such sub-leased portion, whichever is the higher rental in respect of all potentially lettable portions of the PREMISES.
- 1.2 Should the PREMISES or any portion thereof be used by the LESSEE for his own business or trading purposes, a market related rental for such areas shall be determined in accordance with sub-clause 1.4 hereof and be included as part of the gross monthly rental income.
- 1.3 Should any income be derived by the LESSEE in respect of parking provided on the PREMISES, the gross income generated therefrom shall be included as part of the gross monthly rental income.
- 1.4 The LESSEE and the LESSOR shall mutually agree on a market related rental, referred to in sub-clauses 1.1 and 1.2 hereof.
  - 1.4.1 Should the parties fail to reach agreement on a suitable market related rental, each party shall, at his own expense, appoint a registered valuer of his choice to determine such market related rental jointly with the one appointed by the other party;
  - 1.4.2 Should the parties, as represented by their respective valuers, thereafter fail to reach agreement on the applicable market related rental within thirty (30) days from the date of receipt of the joint valuation, the applicable market related rental shall be finally determined by an arbitrator who shall be a registered valuer mutually agreed upon between the parties, or failing such agreement within ten (10) days after expiry of the aforesaid thirty (30) days, be appointed by the President of the South African Council for Valuers, or his nominee;
  - 1.4.3 After appointment of the arbitrator, the respective valuers appointed by the parties shall, within twenty-one (21) days after being called upon to do so be entitled to furnish the arbitrator with their written submission explaining the method used and all relevant factors which were taken into

account in determining their respective assessments of the market related rentals.

- 1.5 The determination of the market related rental by the arbitrator in terms of Clause 1.4.2 hereof shall be final and binding on the parties and the finding of the arbitrator shall not be subject to review by a court.

2. **DETERMINATION OF MARKET RELATED RENTAL AND ESCALATION RATE**

- 2.1 The market related rental and escalation rate referred to in this Lease shall be the market related rates in the commercial and industrial sector and shall be determined by a registered valuer employed or appointed by the LESSOR.

- 2.1.1 In determining the market related rental for any period under review, IMPROVEMENTS effected by the Lessee on the Premises will not be taken into account.

- 2.2 The market related escalation rate referred to in Clause 2.1 hereof shall be determined as being the rate prevailing on the said commencement date of the period under review.

- 2.3 The LESSOR shall after determination of the market related rental and escalation rate notify the LESSEE in writing thereof. The LESSEE shall be liable for payment of the rental based upon the market related rental and escalation rate determined in pursuance of such notice with effect from the commencement date of the relevant period under review.

2.4 **OBJECTIONS TO MARKET RELATED RENTAL AND ESCALATION RATE**

- 2.4.1 The LESSEE shall be entitled within thirty (30) days after being notified in writing of such determination, to object in writing to the market related rental and escalation rate, whereafter the market related rental and escalation rate shall be determined as follows:

- 2.4.1.1 The LESSEE shall within thirty (30) days from the date of such objection and at its own cost and expense furnish the LESSOR with a determination of the market related rental and escalation rate by a registered valuer of its choice.

- 2.4.1.2 Should the parties, as represented by their respective valuers, thereafter fail to reach agreement on the applicable market related rental and escalation rate within thirty (30) days from date of receipt by the LESSOR

of the aforesaid determination by the LESSEE'S valuer, the applicable market related rental and escalation rate shall be finally determined by an arbitrator who shall be a registered valuer mutually agreed upon between the parties, or failing such agreement within ten (10) days after expiry of the aforesaid thirty (30) days, be appointed by the President of the South African Council for Valuers, or its nominee; and

2.4.1.3 After the appointment of the arbitrator, the respective valuers appointed by the parties shall within twenty-one (21) days after being called upon to do so, furnish the arbitrator with their written submissions explaining the method used and all relevant factors which were taken into account in determining their respective assessments of the market related rental and escalation rate.

2.4.2 Subject to the provisions of Clause 2.4.3 hereof, the determination of the market related rental and escalation rate by the arbitrator in terms of Clause 2.4.1.2 hereof shall be final and binding on the parties; and

2.4.3.1 The finding of the arbitrator shall not be subject to review by a court.

2.4.4 The costs in respect of the appointment of the arbitrator shall be borne by the parties in equal shares.

## 2.5 **FAILURE TO DETERMINE MARKET RELATED RENTAL AND ESCALATION RATE**

2.5.1 Should the market related rental and escalation rate for any reason not be determined by the commencement date of the period under review, the LESSEE shall continue to pay the monthly rental equal to the monthly rental payable for the month immediately preceding the period under review.

2.5.2 Upon determination of the market related rental and escalation rate for the period under review, the LESSEE shall forthwith pay to the LESSOR any shortfall in the monthly rental paid or receive a refund from the LESSOR of any overpayments made in terms of Clause 2.5.1 hereof.

## 3. **USE AND DEVELOPMENT OF LAND**

3.1 If the LESSEE undertakes development, the LAND shall be used solely for the purposes applicable to the current Town Planning Scheme of the City of Cape Town Municipality (hereinafter referred to as the "MUNICIPALITY") and for no other purpose whatsoever save with the written permission of the LESSOR in liaison with the MUNICIPALITY.

3.2

The LESSEE is entitled, and obliged, to develop the LAND. If the LESSEE undertakes development it shall be done in accordance with the Development Brief annexed hereto as a site development plan, building plans and specifications approved by the COUNCIL and the LESSOR, and shall at its own cost complete the work within \_\_\_\_\_ (\_\_\_) months from the commencement date of this Lease or within such extended period as may be approved in writing by the LESSOR. All IMPROVEMENTS shall be constructed to the reasonable satisfaction of the LESSOR and the MUNICIPALITY. All plans have to be approved by the LESSOR and MUNICIPALITY.

#### **4. MAINTENANCE AND LIGHTING**

- 4.1 Notwithstanding the fact that the IMPROVEMENTS become the property of the LESSOR upon construction or provision thereof on the LAND, the LESSEE shall not be entitled to claim that the LESSOR should maintain, renew or in any other way alter or protect the interior and exterior of the IMPROVEMENTS, but shall itself and at its own cost ensure that they are maintained, renewed or protected in a proper and workmanlike manner to the satisfaction of the LESSOR and that they shall at no time become dangerous and unsightly. The PREMISES shall at all times be kept in a clean, orderly and sanitary condition to the satisfaction of the LESSOR.
- 4.2 the Lessee shall provide the Lessor with a maintenance plan outlining all planned maintenance works for the duration of the lease, detailing the scope of the planned maintenance and the timeframes.
- 4.3 the Lessee shall provide the Lessor with regular proof of adherence to the maintenance plan by furnishing the Lessor with proof of actual spend on maintenance work.
- 4.4 The Lessor shall be allowed to conduct routine inspections to monitor whether the Lessee has been undertaking the maintenance in accordance maintenance plan and the overall needs to the property based on its condition.
- 4.5 The Lessee shall maintain the property and ensure it is compliant with all relevant regulations and standards for the duration of the lease agreement and furnish the Lessor with all reports for all mandatory regulatory and statutory inspections conducted on the property and mechanical and electrical equipment installed in the property.
- 4.6 Failure of the Lessee to comply with the above should constitute breach of the lease agreement and the Lessor shall be entitled to terminate the lease agreement and take over the property before it falls into a state of disrepair.

- 4.7 The LESSEE shall, at its own cost, ensure that all open and public spaces to be provided within the PREMISES are adequately illuminated to South African Bureau of Standards specifications.

**5. COMPLIANCE WITH STATUTES, BY-LAWS ETC.**

- 5.1 The LESSEE recognises and agrees that it shall not be exempted from compliance with any statute, regulation or by-law imposing duties or obligations upon it as LESSEE or affecting the use of the LAND and that it shall not be entitled to claim relief against the LESSOR from any burden or infringement of its rights resulting from the operation of any such statute, regulation or by-law or any action lawfully taken thereunder by a local or competent authority.

- 5.2 The LESSEE shall not contravene or permit the contravention of-

- 5.2.1 the Title Deed conditions relating to the LAND, and

- 5.2.2 any law, by-law or statutory regulation which the LESSOR is required to observe as a result of the ownership of the LAND or the carrying on of the LESSEE'S business on the LAND.

**6. ADVERTISING RIGHTS**

The advertising rights in respect of the PREMISES shall vest in the LESSEE. No billboards or hoardings shall however be erected on the PREMISES without the written consent of the LESSOR.

**7. INSPECTION**

Any authorised employee of the LESSOR may, at all reasonable times enter upon and inspect the PREMISES in order to satisfy the LESSOR that the conditions of this Lease are being properly observed and carried out and the LESSEE undertakes to afford such employee all reasonable access and facilities for such inspection. Such employee, whilst making use of the said facilities, shall be bound to comply with all safety regulations laid down by the LESSEE.

**8. SERVICES BY LOCAL OR OTHER COMPETENT AUTHORITY**

- 8.1 The LESSEE shall at its own cost arrange with the MUNICIPALITY or other relevant authority for the direct supply of water and electricity and for disposal services of sanitary, sewage, garbage and industrial waste. The LESSEE shall also arrange with the MUNICIPALITY for the



rendering of all other services which may be required in respect of all or any of the activities which are to be carried out on the PREMISES.

- 8.2 The LESSEE shall be responsible for payment of all charges in respect of water and electricity consumed by the LESSEE in or on the PREMISES as well as in respect of all sanitary and refuse removal services directly to the MUNICIPALITY; should the LESSOR be required by law to pay any such amounts, the LESSEE shall then on demand, refund such amounts paid by the LESSOR within fifteen (15) days from the date of request.
- 8.3 The LESSOR reserves the right to lay and use and to allow third parties to lay and use underground services on or across the PREMISES as it will not interfere with or diminish the LESSEE'S own use rights to the PREMISES, without becoming liable to pay any compensation to the LESSEE or to grant any reduction in rent. The LESSEE shall not do or allow anything to be done that would render the laying and use of such services impracticable. The LESSOR and third parties shall at all reasonable times have free access to the PREMISES for the purpose of the construction, maintenance, repairs and replacement or removal of such services. Every person enjoying access in terms of this Clause shall be bound to comply with such safety and security regulations as the LESSEE may lay down.

## **9. INDEMNITY**

- 9.1 The LESSEE shall and hereby does indemnify the LESSOR and hold it harmless against:
- 9.1.1 any loss or damage to the LESSOR'S own property whether movable or immovable, including any consequential damage directly flowing from the physical damage to any such property;
- 9.1.2 liability in respect of any loss of or damage to the property, whether movable or immovable, of third parties;
- 9.1.3 liability in respect of death of or injury to any employee of the LESSOR or any third party; and
- 9.1.4 any legal costs or expenses reasonably incurred in connection with claims or actions arising out of any of the foregoing;

whenever the damage, injury or death contemplated in sub-clauses 9.1.1, 9.1.2 or 9.1.3 above, is due to or arises out of the occupancy of the PREMISES by the LESSEE; PROVIDED THAT the LESSEE shall incur

no liability under this clause for any damage, injury or death which is due to the wilful misconduct of the LESSOR or any of its employees.

- 9.2 The LESSOR shall notify the LESSEE forthwith of the occurrence of any damage or the receipt of any claim or demand for or against which the LESSEE is prima facie liable to indemnify the LESSOR in terms of sub-clause 9.1 hereof, and shall, in respect of such claim or demand, abide by the directions of the LESSEE as to whether and on what terms it shall be settled, compromised or contested; it being agreed that whatever action may be taken by the LESSOR pursuant to such directions of the LESSEE shall be at the LESSEE'S risk and expense.

## **10. INSURANCE**

- 10.1 The LESSEE shall, at its own cost, make provision for adequate insurance during the construction period of any IMPROVEMENTS on the LAND. This insurance shall cover, inter alia, contract works- insurance, public liability (third party) insurance, project delay insurance, "SASRIA" political riot insurance, and any or other insurance to mitigate against all risks that may impact on Transnet. Such insurance shall cover any claims whatsoever which may arise as a result or consequence of construction on the premises.
- 10.2 The LESSEE shall insure, under a separate insurance policy approved by the LESSOR, the IMPROVEMENTS erected on the LAND with a company registered in the Republic of South Africa, against all normal insurable risks for loss of or damage to the IMPROVEMENTS for the full duration of the lease.
- 10.3 The extent of insurance coverage shall be the full replacement value of the IMPROVEMENTS escalated annually and shall provide for extra costs of reinstatement, removal of debris and demolition, rental payable to the LESSOR and professional costs incurred in supervising restoration.
- 10.4 The LESSEE shall, not later than \_\_\_\_\_ 20\_\_ (date of issue of the completion certificate) and each and every subsequent year thereafter, take out at its own cost a tenant and public liability insurance policy, as approved by the LESSOR, and keep it valid for the duration of this Lease and for such amount as which will provide indemnity against all claims arising out of the business which the LESSEE conducts on the PREMISES on the basis of what is known as reinstatement value conditions. The LESSEE will be liable for any amounts payable in excess of the insured amount in the case of a claim.

- 10.5 The LESSEE shall arrange with the insurer to submit to the LESSOR a certificate from the insurer or insurance broker concerned confirming that the policy or policies provide the coverage referred to in sub-clauses 10.2 and 10.4 hereof. Under no circumstances shall any policy be cancelled by the LESSEE without the written consent of the LESSOR.
- 10.6 Should the LESSEE fail to insure or keep in force any insurance coverage which it is obliged or required to obtain in terms of sub-clauses 10.2 and 10.4 hereof, the LESSOR may effect and keep in force such insurance and recover from the LESSEE any premiums paid in respect thereof.
- 10.7 All insurance monies received are to be applied to reinstatement. If the PREMISES are substantially destroyed by an uninsured event, termination of the lease may only be effected by mutual agreement between the LESSOR and the LESSEE with immediate abatement of rental.
- 10.8 The LESSEE shall give all notices and observe conditions and requirements imposed by all relevant insurance policies.
- 10.9 Where the LESSEE sub-lets or employs agents to do work on its behalf it shall-
- 10.9.1 ensure that appointed sub-lessees or agents are aware of the whole content of the insurance policy or policies and the clauses of the contract documents relating to insurance; and
- 10.9.2 ensure that the sub-lessees or agents comply with the requirements of the insurance policy or policies or the contract documents relating to insurance.
- 11. PAYMENT OF RATES, TAXES, ASSESSMENTS, ETC.**
- 11.1 The LESSEE shall be liable for the payment of any rates, taxes, charges, levies or assessments from the commencement date of this Lease.
- 11.2 The LESSEE shall, notwithstanding any objections in terms of Clause 11.4 hereof, within (15) days after being called upon to do so, refund to the LESSOR such payments as the LESSOR may have made to the local or other competent authority in respect of any rates, taxes, charges, levies or assessments which may at any time be levied by such authority upon or in connection with the PREMISES.
- 11.3 Notwithstanding the aforementioned provisions, the LESSOR may in its discretion, at any time require the LESSEE to deposit with it on or before a date determined by the LESSOR the amount estimated to be due in

respect of all such rates, taxes, charges, levies or assessments for the ensuing rating year, in which event any difference between the amount so deposited and the amount actually due shall be adjusted when the last mentioned amount is known. PROVIDED THAT the LESSEE shall not be required to make payment of such amount more than thirty (30) days prior to the due date for payment thereof to the relevant authority. The LESSEE shall not be entitled to a refund of any portion of the sum paid in respect of such rates, taxes, charges, levies or assessments by virtue of the termination of this Lease before the expiry of the period in respect of which they were paid, except where such termination is due to effluxion of time, in which event the LESSEE shall be entitled to a proportionate refund that is in the same ratio as the unexpired portion of the period in respect of which such rates, taxes, charges, levies or assessments were paid, stands to the rating period.

- 11.4 The LESSEE may, under reasonable circumstances, require the LESSOR to object to any valuation made by a Local Authority in respect of the PREMISES or of the LAND of which the PREMISES form a portion, or to any assessment of rates, taxes, charges, levies or assessments for which the LESSEE is liable to refund to the LESSOR as provided in Clause 11.2 hereof. The LESSEE shall be liable for all costs reasonably incurred by the LESSOR in prosecuting any such objection at the insistence of the LESSEE and shall be entitled to any benefit accruing as a result of a successful objection. Notwithstanding provisions of this clause, the Lessor may require the Lessee to object to the Municipal valuations made by the Local Authority.

## **12. FIRE PROTECTION MEASURES**

The LESSEE shall ensure that the IMPROVEMENTS at all times during the currency of this Lease comply with the protective measures against fire as required by the MUNICIPALITY.

## **13. STORING OF EXPLOSIVES AND INFLAMMABLE GOODS**

Except with the written consent of the LESSOR, no explosives or highly inflammable goods, toxic substances or liquids shall be stored or placed upon the PREMISES if the nature of such storage or placing constitutes a higher-than-normal insurance risk. This requirement shall, however, not interfere with the normal and reasonable requirements of the sub-lessees.

#### **14. SECURITY**

The LESSEE shall, at its own cost, at all times and to the satisfaction of the LESSOR, be responsible for adequate security measures on the PREMISES.

#### **15. LIAISON WITH LOCAL COMMUNITY**

In order to ensure good co-operation with all relevant local communities and to incorporate their needs, the LESSEE shall use its best endeavours to liaise with these communities during the currency of this Lease.

#### **16. CESSION AND SUB-LETTING**

16.1 The LESSEE shall not without the prior written consent of the LESSOR, which consent shall not unreasonably be withheld –

16.1.1 cede, assign, transfer, alienate, hypothecate, or otherwise dispose of any of its rights or obligations under this lease;

16.1.2 give up occupation or possession of the PREMISES, or any part thereof, to any person, firm, partnership, company, closed corporation or other juristic person or trust or association, whomsoever and whatsoever, PROVIDED that without effecting the LESSEE'S obligations hereunder, the provisions of clauses 16.1.2 shall not apply to the sub-letting or the giving up of occupation or possession by the LESSEE to a subsidiary of the LESSEE or the LESSEE'S controlling company or to a subsidiary of that controlling company.

16.2 If the LESSEE is a close corporation or a private company, then during the currency of this Lease direct or indirect control therein shall not be acquired by anyone other than its present members or shareholders nor may any shares or member's interests be allotted to any person other than the present members or shareholders without the prior written consent of the LESSOR. If the LESSEE is a private company, then during the currency of this lease, it shall not be entitled to convert to a public company without the prior written consent of the LESSOR. Any transfer or allotment of members interests or shares effected without such consent shall constitute a material breach of the provisions of this lease by the LESSEE. Similarly, the foregoing provisions shall mutatis mutandis, apply in respect of any change in the membership of any other juristic person or association or the beneficiaries of the trust.

16.2.1 Wherever the consent of the LESSOR is required in terms of this clause it shall not be unreasonably withheld, provided that the LESSEE shall

provide guarantees, acceptable to the LESSOR, prior to the granting of such consents.

16.3 The LESSOR shall at any time be entitled to sell, cede, assign, delegate and make over unto or in favour of any legal persona, all its right, title interest and obligations in and to this lease and the LESSEE shall be obliged to effect all payments and discharge all its obligations to such cessionary upon written notification thereof by the LESSOR to the LESSEE.

16.4 Notwithstanding any sale by the LESSOR of the property, this lease shall continue in full force and effect as provided herein. Accordingly, any purchaser shall automatically acquire all the rights and obligations of the LESSOR in terms of this lease and the LESSEE shall not, as a result of the sale of the property be entitled to cancel this lease.

## **17. DISPOSAL OF IMPROVEMENTS ON TERMINATION**

The LESSOR hereby reserves the right to require that upon termination of this Lease by effluxion of time or for any other reason, the PREMISES shall revert to the LESSOR without any compensation to the LESSEE who shall, however, be permitted to remove upon termination of this Lease any machinery, plant and things of an unquestionable movable nature. Any damage to the PREMISES due to such removal to be made good at the cost of the LESSEE to the satisfaction of the LESSOR. The Lessee shall upon termination of the Lease, furnish the Lessor with all relevant compliance certificates of the property; approved Municipal plans; As-build drawings including plans of all systems and equipment affixed to the improvements as well as manuals, warranties and service histories of all equipment affixed to the improvements.

## **18. BREACH**

18.1 Should the LESSEE fail to pay the rental and other charges in full on the due date and fail to remedy such breach within a period of fourteen (14) days after written notice to that effect has been made or given by the LESSOR to the LESSEE or such extended period as may be reasonably required, the LESSOR shall be entitled to terminate this Lease on written notice to the Lessee; PROVIDED THAT the LESSOR shall be entitled to terminate this Lease forthwith on written notice in the event of the LESSEE committing a breach on more than two (2) occasions in any one (1) calendar year.

18.2 Should the LESSEE commit any act of insolvency the LESSOR shall without prejudice to its right to damages or its right to evict the LESSEE from the PREMISES or to any other right whatsoever that the LESSOR

may have against the LESSEE as a result thereof, be entitled to terminate this Lease and immediately recover from the LESSEE the total cost incurred by the LESSOR.

- 18.3 Should the LESSEE commit any other breach of this Lease, the LESSOR shall be entitled to forthwith terminate this Lease if the LESSEE fails to remedy such breach within thirty (30) days after written notice to that effect has been made or given by the LESSOR to the LESSEE, or such further period as may be agreed upon. Should any two (2) breaches occur in one (1) calendar year the Lease may be terminated.
- 18.4 The terms of this Clause shall be without prejudice to and shall not limit other remedies which the LESSOR may have in law as a result of the relevant breach, save that the LESSOR shall not be entitled to terminate this Lease otherwise than in accordance with the terms of Clauses 18.1, 18.2 and 18.3 hereof.
- 18.5 While the LESSEE remains in occupation of the 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 this Lease the-
- 18.5.1 LESSEE shall continue to pay all amounts due to the LESSOR in terms of this Lease on the due dates;
- 18.5.2 LESSOR shall be entitled to recover and accept such payments;
- 18.5.3 acceptance by the LESSOR of such payment shall be without prejudice to and shall not in any manner whatsoever affect the LESSOR'S right to termination of this Lease or to any damages whatsoever - should the dispute between the LESSOR and the LESSEE be determined in favour of the LESSOR, the payments made to the LESSOR in terms of this Clause shall be regarded as amounts paid by the LESSEE in respect of any loss and/or damages sustained by the LESSOR as a result of the breach and -
- 18.5.4 Should the LESSEE fail to make any payment due in terms of this Lease before or on the due date, the LESSEE shall be liable for the payment of interest on the outstanding amount, compounded monthly and calculated from the due date at a rate of two per centum (2 %) above the prime lending rate as determined from time to time by the Standard Bank of South Africa Limited ("Standard Bank") in respect of overdrawn current accounts. The aforementioned rate changes on the same date as such prime lending rate changes. A certificate containing details of the applicable prime lending rate(s) for any appropriate period signed by a person professing to be a manager of any Branch of Standard Bank, and

submitted by the LESSOR during any legal proceedings, is accepted as prima facie proof as to the correctness of the contents thereof by the LESSEE and it agrees to the submission and admissibility of such certificate during any legal proceedings arising from this Lease.

- 18.6 In the event of the LESSEE failing to pay any amount due to the LESSOR, or committing any other breach of the terms and conditions embodied in this Lease, and the LESSOR being obliged as a result thereof to instruct or call upon the LESSEE to rectify such breach, or to proceed against the LESSEE for any reason, in any event, the LESSEE does hereby accept liability for and undertakes to pay on demand to the LESSOR all legal costs of the LESSOR calculated on an attorney and client basis, as shall be lawfully charged.

## **19. TRUSTEE FOR A COMPANY OR CLOSE CORPORATION**

- 19.1 If this lease signed on behalf of the LESSEE by a person who professes to act as agent or trustee (“the TRUSTEE”) on behalf of a company or a close corporation (each herein referred to as “the CORPORATE BODY”) not yet formed, then –
- 19.1.1 The TRUSTEE in his personal capacity hereby warrants to the LESSOR that the CORPORATE BODY for which he is acting will within thirty (30) days from the date of signature of this lease by the LESSOR –
- 19.1.1.1 be duly formed and incorporated;
- 19.1.1.2 pass a resolution adopting this lease without modification;
- 19.1.1.3 take all other steps necessary to render this lease binding on the CORPORATE BODY; and
- 19.1.1.4 deliver to the LESSOR in the case of a company its articles or memorandum of incorporation or, in the case of a close corporation, its founding statement and in either case, a duly certified copy of the resolution referred to in clause 19.1.1.2;
- 19.1.2 until the CORPORATE BODY has become the LESSEE hereunder, the TRUSTEE in his personal capacity shall be entitled to exercise all the rights of and shall be liable for all the obligations imposed on the LESSEE in terms of this lease;
- 19.1.3 if the CORPORATE BODY is not formed within the period prescribed in clause 19.1.1, or, if having been so formed, it does not within the set period comply with its obligations in terms of clauses 19.1.1.2, 19.1.1.3



and 19.1.1.4, then the TRUSTEE in his personal capacity shall be the LESSEE in terms of this lease;

- 19.1.4 If the CORPORATE BODY is formed and complies with the provisions of clause 19.1.1, the TRUSTEE hereby binds himself as surety and co-principal debtor with the LESSEE under renunciation of the benefit of excussion and division in favour of the LESSOR for the due and punctual payment and performance by the LESSEE of its obligations under this lease. Any leniency or extension of time granted by the LESSOR to the LESSEE, whether before or after the due date for payment or performance of any obligation, shall not be a waiver or novation of the LESSOR'S rights against the surety nor prejudice or affect such rights in any way.

**20. RELAXATION OR NOVATION OF LEASE**

No relaxation or indulgence which the LESSOR may show the LESSEE shall in anyway prejudice the LESSOR'S rights hereunder and, in particular, no acceptance by the LESSOR of rental after due date (whether on one or more occasions) nor any other act of omission by the LESSOR including without limitation, the rendering of accounts after due date shall preclude or estop the LESSOR from exercising any rights in terms of this Lease. Unless otherwise notified in writing by the LESSOR, receipt of any rental or other payment by the LESSOR shall in no way whatsoever prejudice or operate as a waiver, rescission or abandonment of any cancellation or right of cancellation affected or acquired prior to such receipt. The LESSOR shall be entitled at its sole discretion to appropriate any amounts received from the LESSEE towards the payment of any cause, debt, or amount whatsoever owing by the LESSEE to the LESSOR whatsoever.

**21. ARBITRATION**

Any dispute arising from, incidental to, or in connection with any provision of this lease shall be referred to the Arbitration Foundation of Southern Africa (AFSA).

**22. OCCUPATIONAL HEALTH AND SAFETY ACT (ACT NO. 85 OF 1993)**

The LESSEE confirms that it has acquired full control in respect of the use of the PREMISES for purposes of the Occupational Health and Safety Act. 1993 (Act No. 85 of 1993).

- 23. NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998, (ACT NO. 107 OF 1998)**
- 23.1 Prior to the commencement of any construction work on the LAND the LESSEE shall submit sufficient proof to the LESSOR that the requirements set out in the National Environmental Management Act, 1998 (Act No. 107 of 1998) have been complied with and unequivocally commit itself to subscribe to the integrated Environmental Procedure as part of the development process.
- 23.2 Should it be deemed necessary by either the LESSOR or the local or competent authority, an Environmental Impact Assessment shall be carried out at the cost of the LESSEE and shall include an assessment of bio-physical, social, cultural economic, aesthetic, technological and political exposures. These assessments shall be conducted by professional expertise. In areas where a particular exposure is judged not to be relevant, a motivation in support of this view shall be submitted. The findings of the Environmental Impact Assessment shall form part of this Lease between the LESSEE and the LESSOR.
- 23.3 The findings of the Environmental Impact Assessment shall be included in an appropriate environmental management system. The management system will apply for the duration of this Lease between the LESSEE and the LESSOR.
- 23.4 The Lessee will be responsible for any pollution and contamination which it may cause or effect to the Leased Premises from Date of Commencement of this Agreement. The Lessee shall:
- 23.4.1 not later than the Expiry Date of the Lease, cause such remedial measures as may be necessary and/or required in terms of any environmental law to be taken; and
- 23.4.2 indemnify the Lessor against any loss or damage (including remediation costs, fines, enforcement actions and the like) which the Lessor may suffer as a consequence of the Lessee having polluted or contaminated the Leased Premises and/or any neighbouring properties in any way.
- 23.4.2.1 Without limitation by inference from any other provision contained in this Lease Agreement the Lessee shall comply with every environmental law or policy or Government Regulation and/or by laws and shall not do anything or omit to do anything on or about the Leased Premises and/or its surrounds that will or is likely to pollute or contaminate the environment or any part thereof.

**24. NOTARIAL REGISTRATION**

- 24.1 The LESSEE shall at its own cost at any time be entitled, should he desire to do so, to have this Lease embodied in a Notarial Deed so as to obtain registration thereof against the title deed of the LAND, and the LESSOR undertakes when called upon by the LESSEE to sign all necessary documents and assist the LESSEE in obtaining all such consents as may be necessary to effect such registration subject to payment of an administration fee to be determined by the LESSOR.
- 24.2 The Lessee shall be required to cancel the Notarial Deed and any other encumbrances against the property, upon expiry or termination of this Lease Agreement. The Lessee shall be responsible for the costs thereof.

**25. RODENT PROOFING**

- 25.1 Any IMPROVEMENTS erected on the Land in terms of Clause 3.2 hereof shall be rendered rodent proof by and at the cost of the LESSEE to the satisfaction of the LESSOR and any competent authority. Any evidence of infestation shall be reported to the LESSOR immediately and the LESSEE shall take such steps as are deemed necessary and shall co-operate with the LESSOR in effecting the proper disinfection thereof.
- 25.2 It shall, furthermore, be the duty of the LESSEE to notify the LESSOR if and when the PREMISES are to become unoccupied and if it should be deemed necessary by the LESSOR to disinfest the LESSEE'S buildings and structures in conjunction with the LESSOR'S own buildings and structures on the PREMISES or on the LESSOR'S adjoining premises, the LESSEE shall render all assistance required by the LESSOR to effect such disinfection, and each party shall be liable for the cost thereof inasmuch as it relates to his own premises.

**26. NOXIOUS WEEDS**

The LESSEE shall not permit the growth upon the PREMISES of noxious weeds and shall comply with the provisions of any law relating to the eradication of such weeds.

**27. POLLUTION**

Pollution of any property adjoining or in the vicinity of the PREMISES by any means whatsoever is strictly prohibited, and the LESSEE shall, at its own cost, provide efficient means of collecting and disposing of any pollutants including any appliances required for this purpose as may be

deemed necessary by the LESSOR or any competent authority to prevent pollution.

**28. ADMINISTRATION FEES**

The fee for the administration of this Lease, shall be the amount of \_\_\_\_\_ (R\_\_\_\_\_ ) plus VAT at 14% or the then prevailing rate, which amount shall be payable by the LESSEE upon or prior to the commencement date of this Lease.

**29. LEGAL PROCEEDINGS**

The parties hereby consent to the jurisdiction of the High Court in respect of any legal proceedings in terms of or incidental to this Lease.

**30. SEVERABILITY**

If any clause or sub-clauses of this lease should be unenforceable in law, then at the option of the LESSOR that clause shall be deemed to be excised from this lease without in any way affecting the enforceability of all the remaining provisions of this lease.

THUS, DONE and SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

AS WITNESSES:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

\_\_\_\_\_  
FOR AND ON BEHALF OF THE  
LESSEE

THUS, DONE and SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

AS WITNESSES:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

\_\_\_\_\_  
FOR AND ON BEHALF OF THE  
LESSOR

**TRANSNET SOC LTD**

**ANNEXURE 2**

**DEVELOPMENT BRIEF FOR THE DEVELOPMENT OF  
 (HEREINAFTER REFERRED TO AS “THE SITE”) FOR \_\_\_\_\_  
 PURPOSES**

**1. DEVELOPMENT OBJECTIVES AND GUIDELINES**

- 1.1 \_\_\_\_\_ (hereinafter referred to as the “DEVELOPER”) shall lease the SITE from the LESSOR for the purpose set out in Clause 1.4 hereof.
- 1.2 The DEVELOPER shall develop the SITE at its own cost in accordance with the development guidelines as set out in this document.
- 1.3 The development shall be attractive and functional and shall at all times cater for the safe movement of pedestrians, handicapped persons and vehicles in and around the SITE with particular attention being paid to the delivery of goods.
- 1.4 The development shall be an independent entity capable of functioning on its own and shall consist of \_\_\_\_\_.
- 1.5 The development shall be done in consultation with all the communities and interested parties in compliance with Clause 22 of Annexure 1.

**2. DEVELOPMENT OF THE SITE**

- 2.1 Development of the SITE shall conform to the MUNICIPALITY’S Town Planning Scheme for \_\_\_\_\_ use as set out in Clause 4 of this Annexure.
- 2.2 The commencement of construction work is subject to the approval of a site development plan and building plans by the LESSOR and the COUNCIL or any other relevant authority whose approval may be necessary to enable construction work to commence. Site inspections will be conducted by the MUNICIPALITY and the LESSOR. Occupation Certificates shall not be issued unless the buildings are properly connected to municipal services.

2.3 Plans submitted to the LESSOR should ultimately bear the approval of the MUNICIPALITY and any other relevant authority whose approval may be required to enable construction work to commence.

2.4 Should the LESSEE wish to make any additions or alterations of any nature whatsoever to the exterior of existing PREMISES or any structural alterations or additions to the interior of the existing PREMISES, it shall only do so after having obtained the prior written consent of the LESSOR, which consent shall not unreasonably be withheld and may be granted subject to such conditions as the LESSOR may impose as well as other necessary approvals that may be required.

### 3. THE SITE

#### 3.1 Description and Locality

3.1.1 The SITE is situated in the \_\_\_\_\_, province of \_\_\_\_\_, in extent \_\_\_\_\_ hectares (\_\_\_\_\_ ha), as depicted on the attached Agreement Plan No. \_\_\_\_\_, annexed hereto as attached.

3.1.2 Details of the exact boundaries of the SITE are available from Transnet's Geo-Spatial Office, Johannesburg at Tel. (\_\_\_\_) \_\_\_\_\_ (Mr \_\_\_\_\_).

#### 3.2 Survey of Site and registration of title

3.2.1 The SITE shall be surveyed by a registered Land Surveyor to be appointed by the DEVELOPER at its own cost in collaboration with TRANSNET PROPERTY'S Geo-Spatial Office, Johannesburg and the DEVELOPER shall provide the LESSOR with the approved sub-divisional diagrams. The LESSOR will thereafter arrange for the registration of a Certificate of Registered Title in favour of Transnet SOC Ltd in respect of the SITE at the cost of the DEVELOPER.

#### 3.3 Sub-surface conditions

The DEVELOPER shall be responsible for determining the sub-surface conditions of the SITE at its own cost and all reports related to the research into the subsurface conditions shall be made available to the LESSOR for its information.

#### 3.4 Service connections

- 3.4.1 Services such as water, sewerage, stormwater drainage and electricity shall be arranged with the MUNICIPALITY and connected to its networks by and at the cost of the DEVELOPER. All such services to be provided on MUNICIPALITY land will be installed by the MUNICIPALITY after properly compiled drawings, certified by a professional engineer, have been approved by the MUNICIPALITY and the LESSOR and the necessary funds received from the DEVELOPER. The DEVELOPER shall be liable for any cost levied by the MUNICIPALITY for the provision of services on the SITE, as well as any other service contributions such as bulk services contribution payable to the COUNCIL on submission of building plans.
- 3.4.1.1 Existing services of the MUNICIPALITY and the LESSOR on the SITE, e.g. sewer lines, electricity cables and water pipes, shall not in any way be impeded or restricted and where such services are to be relocated it shall only be done by the DEVELOPER with the prior approval of the LESSOR.
- 3.4.2 Prior to connection of services in Clause 3.4.1 the approval of the LESSOR is required to arrange for the necessary supervision and protection of their day-to-day activities on the SITE.
- 3.4.3 All known services on the SITE are indicated on plan however should there be unknown services on the SITE, the DEVELOPER shall act in accordance with clause 5.7 hereof, should any such services be encountered by it.
- 3.4.4 If any archaeological remains are discovered during the course of construction, the National Monuments Council shall be notified immediately, and the DEVELOPER shall comply with the requirements of that COUNCIL.
- 3.4.5 All development cost, including costs for improvements, which may be required to the infrastructure or services shall be undertaken by and at the cost of the DEVELOPER.
- 3.4.6 Access to the SITE will be arranged by the and at the cost of the DEVELOPER to the satisfaction of the MUNICIPALITY

- 4. **TOWN PLANNING CRITERIA**
- 4.1 Zoning
  - 4.1.1 The SITE is earmarked for \_\_\_\_\_ use as proposed by the DEVELOPER and a formal application to re-zone the existing use of the SITE in terms of the MUNICIPALITY'S Town Planning criteria will have to be lodged to the MUNICIPALITY by the DEVELOPER at its cost.
- 4.2 Coverage, Floor Area Ratio and Height.
  - 4.2.1 Floor Area Ratio, coverage and height restriction, shall be as specified in the MUNICIPALITY'S Town Planning Scheme for \_\_\_\_\_ use.
- 4.3 Building restriction.
  - 4.3.1 Building restrictions shall be as specified in the MUNICIPALITY'S Town Planning Scheme for \_\_\_\_\_ use.
- 4.4 Parking
  - 4.4.1 Parking requirement shall be as specified in the MUNICIPALITY'S Town Planning Scheme for \_\_\_\_\_ use.
  - 4.4.2 All loading and offloading shall be accommodated in positions to the satisfaction of the MUNICIPALITY and the LESSOR.
- 4.5 Ingress and Egress
  - 4.5.1 Vehicular and pedestrian ingress to and egress from the SITE shall be to the satisfaction of the LESSOR and the MUNICIPALITY.
- 4.6 Environmental Impact Assessment
  - 4.6.1 It is required by South African Legislation that any person or organisation that proposes to carry out an activity which may have a detrimental effect on the environment, apply to the Department of Environmental Affairs for permission to carry out such an activity. The primary purpose of the Environmental Impact Assessment is to provide the Department of Environmental Affairs with sufficient information about the proposed activity for an informed decision to be made regarding the project and its alternatives. The entire exercise will be carried out by and at the



cost of the DEVELOPER and should be approved by the LESSOR and relevant authorities.

#### 4.7 Traffic Impact Assessment

4.7.1 Due to the nature of the development, localised traffic is expected to increase and to accommodate the increase in traffic volumes the DEVELOPER will at its cost arrange for a Traffic Impact Assessment to be carried out by a Professional Engineer practising in that field, which assessment has to be approved by the Local or competent authorities and the LESSOR.

#### 4.8 LESSOR'S requirements

4.8.1 The DEVELOPER shall at its own cost construct and thereafter maintain the following items of work:

##### 4.8.1.1 Paving and Landscaping

All areas within the SITE other than the loading and off-loading areas, (goods and/or pedestrians/visitors) not encumbered by buildings shall be paved/tarred and/or landscaped. The paving is to be bricked paving or equivalent and harmonious with the architecture of the development. Landscaping is to be of a standard to the approval of the LESSOR and the MUNICIPALITY.

##### 4.8.1.2 Fencing

The DEVELOPER shall at its own cost secure the development where necessary with appropriate quality material, which will be done in collaboration with the LESSOR. Plans shall be submitted to the LESSOR for approval prior to installation.

##### 4.8.1.3 Stormwater

Adequate provision must be made for stormwater drainage to ensure that adjacent Transnet properties (if applicable), as well as all adjacent properties owned by third parties, are not adversely effected by the development. Such stormwater drainage must be integrated with the MUNICIPALITY'S network with its approval. Any necessary enlargements of the stormwater pipes will be for the cost of the DEVELOPER. Plans duly approved by the MUNICIPALITY, will also have to be approved by the LESSOR prior to commencement of the work.

- 5. SITE AND CONSTRUCTION CONSIDERATIONS**
- 5.1 The LESSOR and the MUNICIPALITY will establish a Works Committee (hereinafter referred to as “the COMMITTEE”), if necessary, to assist the DEVELOPER during the construction period with phasing, technical and other construction related items.
- 5.2 The DEVELOPER shall co-ordinate his construction programme with the COMMITTEE in order to minimise disruption to the general public.
- 5.3 During construction the DEVELOPER shall ensure that proper measures are taken to minimise-
- 5.3.1 emanation of dust which may prove a source of annoyance to the LESSOR, the MUNICIPALITY or the general public including adjacent owners; and
- 5.3.2 damage to existing services and equipment of the LESSOR or the MUNICIPALITY or adjacent owners.
- 5.4 The DEVELOPER shall submit complete details to the COMMITTEE of the system he proposes to use on the SITE for storage of fuel and fuelling of his vehicles and equipment. The written approval of the COMMITTEE shall be obtained before any fuelling system becomes operative.
- 5.5 The DEVELOPER shall at all times be responsible for the security of the SITE.
- 5.6 The SITE shall at all times be kept in a neat and tidy condition. During the construction period all materials brought onto the SITE, whether for incorporation into the development or whether required for construction purposes, shall be properly and neatly stacked to allow easy identification and access. Rubbish shall be collected, placed in bins and removed from the SITE at frequent intervals by and at the cost of the DEVELOPER. Within two (2) weeks of completion of building work, the SITE shall be cleared of all rubble and left in a neat, clean and tidy condition to the satisfaction of the COMMITTEE.
- 5.7 According to the records of the LESSOR sub-surface services might exist on the SITE, but should any unidentified cables, pipelines or other sub-surface services or other services be encountered during construction, the COMMITTEE must be notified immediately and all work in the vicinity of such cables,

pipelines or services shall cease until written authority to proceed with work has been obtained from the COMMITTEE. The DEVELOPER shall take into account the possibility of unidentified cables/services in its proposals, such as relocation or damage thereto which will be for its cost.

- 5.8 Any existing stormwater drainage systems shall remain operational at all times during construction of the development.
- 5.9 The DEVELOPER shall provide adequate temporary toilet and ablution facilities for all its employees, in terms of existing municipal by-laws, during the construction phase.
- 5.10 The DEVELOPER or his contractor shall be responsible for providing all water and electricity for construction purposes at his own expense.
- 5.11 The DEVELOPER shall, at its own cost, ensure that all open and public spaces to be provided within the SITE are adequately illuminated to South African Bureau of Standards specifications.
- 5.12 The MUNICIPALITY'S traffic department shall be informed timeously and with its consent of any changes that could disrupt public vehicular traffic.
- 5.13 The area to be used by the DEVELOPER or its contractor as a construction site must be approved by the WORKING COMMITTEE. Sheds and the storage of material and plant shall be confined to these areas.

## 6. **DESIGN CONSIDERATION**

- 6.1 All materials used by the DEVELOPER shall comply with the requirements of the relevant Specifications, Codes and Rules issued by the South African Bureau of Standards or by the British Standards Institution where the former do not exist. Only undamaged materials shall be used in the works. All work shall be executed in accordance with the manufacturer's instructions.
- 6.2 To ensure synergy in the architecture of the development the DEVELOPER shall submit architectural guidelines as part of the Site Development plan for approval by the WORKING COMMITTEE. The guidelines shall set architectural parameters such as design, materials, finishes, and landscaping and street-scaping standards and shall reflect the nature of the development.

## 7. PLANS AND APPROVAL

- 7.1 The approval of drawings by the LESSOR does not indicate acceptance of any responsibility for the safety or adequacy of the structures.
- 7.2 The LESSOR will endeavour to expedite the approval of all plans submitted by the DEVELOPER for the development.
- 7.3 The DEVELOPER shall up-date all the relevant plans with as-built information such as invert levels of manholes and routes of services, if altered. These plans shall be submitted to the LESSOR within one (1) month of the completion of the building contract.

## 8. NATIONAL BUILDING REGULATIONS

The DEVELOPER shall comply with all the relevant requirements laid down in the National Building Regulations.

## 9. BLASTING AND USE OF EXPLOSIVES

- 9.1 No blasting in the vicinity shall be carried out except with the prior written permission of the COMMITTEE and under such conditions as it may impose.
- 9.2 The DEVELOPER shall make arrangements for the supply, transport, storage and use of explosives.
- 9.2.1 The DEVELOPER shall have labour, tools and equipment, to the satisfaction of the COMMITTEE, available on the SITE to clear immediately any stone or debris deposited on the SITE by blasting, and to repair any damage immediately after blasting. Repairs to the property shall be carried out only under the supervision of a duly authorised representative of the COMMITTEE.

## 10. SURETYSHIP

- 10.1 The DEVELOPER shall, prior to the commencement of any construction work, procure and lodge with the LESSOR security in the amount of \_\_\_\_\_ per centum (\_\_\_\_\_% ) of the estimated cost of the works or \_\_\_\_\_ (R\_\_\_\_\_), whichever is the lesser.
- 10.2 Such security shall be in the form of: -

- 10.2.1 Government or approved Municipal Stocks in negotiable form, or
- 10.2.2 a deed of suretyship/ guarantee furnished by a commercial bank, financial, insurance or guarantee corporation, in such form as may be prescribed by the LESSOR.
- 10.3 Should the development not proceed due to the negligence of the DEVELOPER the surety will become executable in favour of the LESSOR and will be deemed as breach of contract.
- 10.4 The surety referred to in Clause 10.1.2 will be returned to the LESSEE on the date of certification by a Professional Engineer that the final completion certificate for construction work has been issued.

## **11. SURVEY BEACONS AND PEGS**

- 11.1 The DEVELOPER shall on no account move or damage any beacon, benchmark, reference mark, signal or trigonometrical station during construction work, without the written approval of the COMMITTEE. Should the DEVELOPER be responsible for any such occurrence, it shall report the circumstances to the COMMITTEE who will arrange with the Director General of Surveys for replacement of the beacon or mark at the cost of the DEVELOPER.
- 11.2 The DEVELOPER shall not move or damage any cadastral or mining beacon without the written approval of the COMMITTEE before it has been referenced by a Land Surveyor. Any old boundary beacon which becomes an internal beacon on creation of new boundaries shall not be moved without the written approval of the COMMITTEE. Should the DEVELOPER move or damage any cadastral or mining beacon without authority, it shall be responsible for having it replaced at its cost by a Land Surveyor.
- 11.3 The DEVELOPER shall preserve all pegs and benchmarks. Such survey points shall not be moved without the written approval of the COMMITTEE. Should any peg or benchmark be removed without authority, the COMMITTEE will arrange for its replacement and the cost will be recovered from the DEVELOPER. No claim will be considered for delay in replacing any such peg or benchmark. Each peg replaced shall be checked by the DEVELOPER.
- 11.4 Where a new boundary has been established, beacons of the fence line shall not be disturbed, and no fence post or anchor may

be placed, or excavation made within 0,6 m of any beacon without the prior written approval of the COMMITTEE.

**12. WORK ON OVER UNDER OR ADJACENT TO RAILWAY LINES AND HIGH VOLTAGE EQUIPMENT.**

The DEVELOPER shall conform to the requirements laid down in the General Conditions and Specifications for work on, over under or adjacent to the railway lines and near high voltage equipment, contained in form E7/2 as amended from time to time, which is annexed hereto as annexed and signed by the parties as relevant hereto.

THUS, DONE and SIGNED at \_\_\_\_\_ on this  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**FOR AND ON BEHALF OF THE  
LESSEE**

THUS, DONE AND SIGNED at \_\_\_\_\_ on this  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**FOR AND ON BEHALF OF THE  
LESSOR**