



CapeGateCrescent

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# **AGREEMENT OF LEASE: CAPEGATE CRESCENT - OFFICES**



GJ REHBOCK/mb/GC1839

## OFFER TO LEASE CAPEGATE CRESCENT DEVELOPMENT

We,

Full name of entity:

Registration No:

of address:

Contact Number:

E-mail address:

(the full details of whom are set out in A and B below)

("the Tenant")

hereby offer to lease from:

**CAPEGATE CRESCENT DEVELOPMENT (PROPRIETARY) LIMITED**

**(Registration No. 2007/008700/07)**

**(the Landlord)**

the **PREMISES** described in C below, in the building, as more fully indicated on the plans annexed (provided that if such plans are absent, this offer shall not thereby be invalidated, the tenant acknowledging that they have had the premises pointed out to them on a plan), which **PREMISES** are existing or being or are about to be constructed on the following terms and conditions:

### **LEASE PERIOD**

1. The period as set out in D below and commencing on the commencement date as reflected in D below.

### **RENTAL**

2. The rental and operational costs shall be the amount as is set out in E below. The monthly rental does not include Value Added Tax (VAT) and if applicable shall be additional to the rental payable.

### **ESCALATION**

3. The escalation shall be as set out in E below.

### **DEPOSIT:**

4. Within 7 (SEVEN) days of acceptance of this offer the **TENANT** shall pay to the **LANDLORD** a deposit equal to 2 (TWO) months rental or present a Bank guarantee for same. The **LANDLORD** shall retain such deposit or guarantee and shall all deposits be paid into the trust banking account of Symington & De Kok Attorneys, Ground Floor, Vineyard Square South, The Vineyards Office Estate, 99 Jip De Jager Drive, Tygervalley, Bellville, to be held by them in a special savings account as contemplated in **Section 78(2)(A) of the Attorneys Act, No. 53/1979, as amended**, for the currency of the agreement or any renewal thereof. Within a period of 1 (ONE) month after the **TENANT** has vacated the premises the **LANDLORD** shall refund such deposit to the **TENANT** less the cost of any damages which the **TENANT** is responsible for and provided that the **TENANT** has complied with all the terms and conditions of the agreement.

### **USE OF PREMISES**

5. The premises shall be used for office purposes.

### **LEASE COSTS AND STAMP DUTY**

6. The **TENANT** shall be liable for the cost of preparation of the Lease and the stamp duty thereon.

### **INTRODUCTION**

7. The **TENANT** warrants that, the **TENANT** was not introduced to the property or the **LANDLORD** by any agent other than \_\_\_\_\_ and hereby indemnifies the **LANDLORD** against any claim by any person other than the said agent for commission in respect of this transaction.

### **SURETY**

8. The signatory shall bind himself/herself/themselves as surety and co-principle debtor for guaranteeing all the obligations of the **TENANT** in terms of this Lease.

### **VARIATION**

9. No agreement to vary, add or cancel this agreement shall be of any force and effect unless reduced to writing and signed by the parties or on behalf of the parties to this agreement.

### **COMMISSION**

10. In the event of this offer or any amendment thereto being accepted or the **TENANT** taking occupation of the premises, the **LANDLORD** shall be liable for payment of commission to \_\_\_\_\_ at the recommended tariff laid down S.A.P.O.A. plus Value Added Tax as applicable

### **EXPIRATION OF OFFER**

11. This is a firm and binding irrevocable offer that shall remain binding for a period of 90 (NINETY) days after signature thereof by the **TENANT**.  
Upon acceptance of the offer, this offer read together with the conditions of lease and other annexures hereto, will form the binding agreement of lease between the parties.

### **ACKNOWLEDGEMENT BY TENANT**

12. The **TENANT** hereby acknowledges that:
- 12.1 This proposal is made voluntarily and entirely at their own risk;
- 12.2 The **TENANT** is to make its own independent assessment and investigation regarding the viability of our intended business and that neither the **LANDLORD** nor its agents will be liable for compensation of any expenses or losses incurred or suffered by the **TENANT** in applying for the **PREMISES** and will the **LANDLORD** or their agents not incur any obligation or liability to prospective tenants, whether with regard to the letting of premises, a store concept or design of claim to confidentiality, novelty or otherwise except as may be separately contracted for in writing;
- 12.3 The **LANDLORD** reserves the right to accept or to decline any proposals put to it in their sole of absolute discretion and without the need to give reasons for that decision.



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**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

**AS WITNESSES**

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

\_\_\_\_\_  
**TENANT**

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

I, the undersigned,

**JAN DE VILLIERS BRINK**

in my capacity as director of the **LANDLORD** and duly authorized thereto, hereby accept the **TENANT'S** offer.

**ACCEPTED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

**AS WITNESSES**

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

\_\_\_\_\_  
**LANDLORD**

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

## CONDITIONS OF LEASE

### THIS IS THE CONDITIONS OF LEASE REFERRED TO IN PARAGRAPH 11 OF THE OFFER

#### 1. **INTERPRETATION:**

- 1.1. The clause headings of this Agreement are for reference purposes only, and shall not be used in the interpretation thereof ;
- 1.2 Unless the context clearly indicates a contrary intention :
- 1.2.1. expressions which denote :
- 1.2.1.1. any gender, shall include the other genders ;
- 1.2.1.2 a natural person shall include an artificial person, and vice versa;
- 1.2.1.3 the singular shall include the plural and vice versa;
- 1.2.2. The following expressions shall have the meaning set opposite them below ;
- 1.2.2.1 "the LANDLORD" means the party indicated as LANDLORD in the Agreement and includes any successor in title of the LANDLORD;
- 1.2.2.2 "the period or term of this Lease" means the period as stipulated in the Agreement in D below and includes any extension or renewal thereof;
- 1.2.2.3 "the expiration of this Agreement" shall include any earlier termination thereof by any party to this Agreement for whatever cause;

#### 2. **PREMISES MEASUREMENT**

The area of the Premises as shown in C below ("**the area**"). The area (SAPOA method of measurement) is subject to final measurement as evidenced by the Architect's certificate as appointed by the Landlord (if necessary). Any calculations referred to herein, in which the area is a factor, shall be subject to revision if the area changes upon final measurement. Any reasonable structural requirement such as columns shall be accommodated within the Premises.

3. **LEASE PERIOD**

The lease shall be for the period shown in D below commencing on the date shown in D below ("the commencement date") subject, however, to Clause 11. The Tenant shall be obliged to commence trading in the Premises from the commencement date.

4. **RENTAL**

- 4.1 The basic monthly rental (which shall be subject to such adjustments as are provided for in this **AGREEMENT**) is as set out in E below.
- 4.2 The monthly rental does not include Value Added Tax (VAT) and if applicable shall be additional to the rental payable.

5. **LEVIES:**

- 5.1. The LANDLORD is responsible for the payment of rates and taxes levied from time to time on the property of which the PREMISES form part;
- 5.2 In the event of an increase in the rates and taxes levied on the building housing the PREMISES and/or the land or any further form of tax of whatever nature being levied or imposed upon the aforesaid building and/or the land and/or the rental by any competent Authority at any time after the date of commencement of the period of this Agreement, or the date of the signing of this Agreement (whichever shall occur the first), the following provisions shall apply :
- 5.2.1 The rental payable by the TENANT shall in the event of an increase in the rates and taxes levied or imposed upon the building on the LANDLORD'S property and/or the land or any further form of tax of whatever nature being levied or imposed upon the aforesaid building and/or the land be increased by a proportion of such further tax bearing the same ratio as to the whole amount thereof as the rental payable by the TENANT bears to the total gross rental payable to the LANDLORD at such date in respect of the whole of the said land and/or building - any unlet portion being deemed to be let at such date at the average rental rate receivable by the LANDLORD in respect of similar accommodation being let by the LANDLORD in the said building. In the allocation of such further form of tax only tenantable areas shall be taken into account, and no account shall be had of

areas of common usage such as passages, staircases, entrances, access and parking areas or the like ;

5.2.2. The rental payable by the TENANT shall in respect of any form of tax being imposed upon the rental by any competent Authority be increased by an amount equivalent to such tax, and be payable on the due date for payment of rental.

5.3 The TENANT shall be responsible for the due and punctual payment of all municipal and other charges for electricity and water consumed on the PREMISES, and for all other services rendered by a competent Authority in respect of the PREMISES relative to the TENANT'S occupation of the PREMISES in terms of this Agreement.

6. **TIME AND PLACE OF PAYMENT OF RENTAL:**

The rental is payable in the currency of the Republic of South Africa monthly in advance on or before the 1st (FIRST) day of each and every month, free of bank exchange in CAPE TOWN and at such address in the Republic of South Africa as the LANDLORD may advise the TENANT from time to time.

7. **USE OF PREMISES:**

The TENANT shall use the PREMISES for offices.

8. **RIGHTS AND DUTIES OF TENANT:**

8.1 **DEFECTS IN PREMISES:**

8.1.1. The TENANT shall by written notice to be received by the LANDLORD within 30 (THIRTY) days of the date upon which the TENANT is entitled to possession and occupation of the PREMISES in terms of this Agreement advise the LANDLORD of any defects in the PREMISES. If the TENANT should fail to so advise the LANDLORD, the PREMISES shall ipso facto be deemed to have been received by the TENANT free of any defects (excluding structural and/or latent defects), and the TENANT shall thereupon be liable to repair such defects as may exist. The LANDLORD shall attend to or secure the reparation of such defects as is the liability of the LANDLORD in terms of this sub-paragraph as soon as is reasonably feasible and for the account of the LANDLORD, and the TENANT shall be entitled to a



reduction in rental commensurate with the TENANT'S deprivation of the beneficial occupation and use of the PREMISES (if any) in consequence thereof;

8.1.2 The TENANT shall during the currency of this Agreement notify the LANDLORD in writing of any defects in the PREMISES immediately upon such defects being noted by, or brought to the knowledge of, the TENANT.

8.2. **MAINTENANCE :**

8.2.1. **CONDITION OF PREMISES:**

The TENANT shall at all times during the currency of this Agreement keep the PREMISES in a good, clean, hygienic and tidy condition and free of such defects as are the responsibility of the TENANT in terms of this Agreement - the TENANT being obliged to remedy the aforementioned defects with due promptitude. The TENANT shall, moreover, at the expiration of this Agreement hand over the PREMISES to the LANDLORD in the aforesaid condition - fair wear and tear only excepted. The exterior of all doors, plateglass and windows to the PREMISES shall for the purposes of this subparagraph be deemed to form part of the PREMISES.

8.2.2. **REPLACEMENT :**

The TENANT shall be obliged to repair or replace (as the case may be) all electric globes, fluorescent tubes, switches, wall plugs, basin washers and basin plugs immediately upon their becoming defective (fair wear and tear not being excepted).

8.2.3. **DAMAGE TO WALLS, etc.:**

The TENANT shall only be entitled to have such objects affixed to, and/or driven into, the floor, walls, ceiling or such other part of the PREMISES as may be sanctioned in terms of a prior written consent of the LANDLORD and on such conditions as the LANDLORD may reasonably stipulate ;

8.2.4 **WEIGHTY ARTICLES :**

The TENANT shall not be entitled to introduce and/or install upon the PREMISES any articles of such weight as may in the opinion of an architect appointed by the LANDLORD be detrimental to the structure of the building housing the PREMISES ;

8.2.5.

**REFUSE CONTAINERS:**

The TENANT shall provide and maintain in good condition all refuse containers necessary for the conduct of the business of the TENANT. The TENANT shall ensure that the said containers are so positioned as not to cause offence to the public or detract from the appearance of the LANDLORD'S property;

8.2.6

**SLEEPING ON PREMISES:**

The TENANT shall not permit any person to dwell or sleep upon the PREMISES save with the prior written consent of the LANDLORD;

8.2.7

**ALTERATIONS :**

8.2.7.1

The TENANT shall in no manner effect any further temporary or permanent structural alterations of whatever nature (including electrical and plumbing alterations) to the PREMISES without the prior written consent of the LANDLORD, and then only upon such conditions as may in the sole and absolute discretion of the LANDLORD be laid down.

8.2.7.2

The TENANT shall be entitled from time to time to install and maintain in the PREMISES such fittings, furniture and equipment as may be reasonably necessary for the conduct therein of the TENANT'S business. Such fittings, furniture and equipment shall be removed by the TENANT by not later than the date of the expiration of this Agreement, and any damage caused to the PREMISES in consequence of such removal shall be made good by the TENANT forthwith and at the expense of the TENANT.

8.2.8.

**ELECTRICAL AND PLUMBING INSTALLATIONS:**

The TENANT shall only use or permit the use of the electrical and/or plumbing installations on the PREMISES for the purposes for which the same are intended and reasonably capable of being utilised.

8.2.9.

**PUBLIC AUCTION:**

The TENANT shall not hold or permit the holding of sales by public auction in or about the PREMISES without the LANDLORD'S prior written consent and upon such conditions as the LANDLORD may stipulate.

8.2.10. **DAMAGE TO PREMISES :**

8.2.10.1. The TENANT shall be responsible for any damage to the PREMISES resulting from any act or omission of the TENANT or any employee or agent of the TENANT or caused by forcible entry.

8.2.10.2. Any damage to the PREMISES shall only be repaired by a contractor, person or agent approved of in writing by the LANDLORD, and to this end such contractor, agent or person shall at all reasonable times be accorded the necessary access to, and use of, the PREMISES to effect the required repairs.

8.2.10.3 The TENANT shall be entitled to a reduction in rental commensurate with the TENANT'S deprivation of beneficial occupation and use of the PREMISES only if such deprivation does not arise from circumstances for which the TENANT is liable in terms of the Agreement.

8.3. **INSURANCE:**

8.3.1. **PLATE GLASS :**

8.3.1.1. All plateglass on the PREMISES shall be insured by the TENANT with an insurer approved of in writing by the LANDLORD, and the TENANT shall be obliged to maintain such insurance during the term of this Agreement, timeously pay all premiums in respect thereof, and on demand by the LANDLORD exhibit written proof of the continued existence of such insurance policy and the payment of premiums in respect thereof.

8.3.1.2. Should any claim under the insurance policy referred to in the foregoing sub-paragraph be repudiated by the insurer concerned for whatever reason, the replacement of any damaged plateglass shall forthwith be undertaken and effected by the TENANT or an agent of the TENANT at the sole expense of the TENANT.

8.3.2. **FIRE INSURANCE :**

The TENANT shall not keep or permit to be kept on the PREMISES any goods which may detrimentally affect or vitiate the LANDLORD'S fire insurance policy relating to the building housing the PREMISES

and/or any other improvements on the LANDLORD'S property, save that, if the LANDLORD shall at the request of the TENANT agree to obtain, and succeed in obtaining, a revision of such policy to enable the TENANT to keep any such goods on the PREMISES, and such revision entails an increase in premium, the TENANT shall on demand reimburse the LANDLORD for such increase in premium.

8.3.3.

**PUBLIC LIABILITY :**

8.3.3.1.

The TENANT shall be obliged to maintain a public liability insurance policy with an insurer (approved of by the LANDLORD in writing) during the term of this Agreement to cover any claim that may arise in consequence of any injury or loss suffered in or about the PREMISES as is normally covered by a public liability insurance policy, timeously pay all premiums due in respect thereof, and forthwith upon demand by the LANDLORD exhibit written proof of the existence of the said policy and the payment of premiums in respect thereof.

8.3.3.2.

The TENANT does, moreover, unconditionally indemnify the LANDLORD against any claim normally covered by a public liability insurance policy (as envisaged in the preceding subparagraph) which may be made against the LANDLORD for any damages arising from any injury or loss suffered in or about the PREMISES.

8.4.

**ADVERTISING :**

8.4.1.

The TENANT shall be entitled (subject to the LANDLORD'S prior written consent, which shall not be unreasonably withheld) to utilise the PREMISES for the TENANT'S own advertising purposes, provided that all signs and advertisements are erected and maintained exclusively at the risk, cost and expense of the TENANT.

8.4.2.

The TENANT shall not erect any external sign or advertisement without the prior written consent of the LANDLORD, which consent shall not be unreasonably withheld. The TENANT shall be liable for the punctual payment of awning and any other charges levied by a competent Authority for any external sign or advertisement erected by or on behalf of the TENANT.

- 8.4.3. The TENANT shall ensure that all signs and advertisements as referred to in the foregoing sub-paragraphs are at all times maintained in good order and condition.
- 8.4.4. The TENANT shall be liable to make good any damage caused directly or indirectly by any such sign and/or advertisement as referred to in 5.4.1. and 5.4.2. above either to the PREMISES or to any person or property.
- 8.4.5. All signs and advertisements shall be removed by the TENANT by not later than the date of expiration of this Agreement, and any damage to the PREMISES and/or the property of the LANDLORD resulting therefrom shall forthwith be made good by the TENANT at the expense of the TENANT.
- 8.5. **INTERFERENCE:**  
The TENANT shall in no way interfere with or obstruct the rights of any other tenants (if any) in the building housing the PREMISES, and shall similarly not permit any such interference or obstruction by any employee and/or agent of the TENANT.
- 8.6. **COMPLIANCE WITH LAWS :**  
The TENANT shall not contravene or permit the contravention of any Statute, ordinance or regulation of any competent Authority relative to the occupation of the PREMISES or the conduct therein of the business of the TENANT.
- 8.7. **CONDUCT OF BUSINESS :**  
Save on Saturdays, Sundays, a Public and/or Religious Holiday, the TENANT shall daily during the normal business hours maintained by undertakings conducting business similar to that of the TENANT keep the PREMISES open and conduct therein the business of the TENANT.
- 8.8. **SUB-LETTING, CESSION, ASSIGNMENT:**
- 8.8.1 The TENANT shall not, without the prior written consent of the LANDLORD first had and obtained (which consent shall not be unreasonably withheld) have the right to sub-let or part with personal possession of the PREMISES or any portion thereof nor shall the TENANT allow any persons other than those in the bona fide employ of the TENANT conducting business on behalf of the TENANT to occupy the same nor shall the TENANT have the right to cede and/or

assign any of the TENANT'S rights and/or obligations in terms of this Agreement.

8.8.2 The LANDLORD shall have the right to cede and/or assign any of his rights and/or obligations in terms of this AGREEMENT without the consent of the TENANT.

8.8.3 If the TENANT is a company whose shares are not listed on the Johannesburg Stock Exchange, no shares therein shall be transferred from its present shareholders, nor may any shares therein be allotted to any person other than such shareholders, without the TENANT'S prior written consent, which, in the case of an allotment or transfer of shares which will still leave control of the TENANT with the existing shareholders as at the date of signature hereof or of a transfer of shares to a deceased shareholder's heirs, shall not be unreasonably withheld. Any transfer or allotment of shares effected without such consent shall constitute a breach of the terms of this Lease by the TENANT. The foregoing provisions shall apply, mutatis mutandis, if the TENANT is a close corporation.

**9. RIGHTS AND OBLIGATIONS OF THE LANDLORD :**

**9.1. MAINTENANCE OF EXTERIOR OF BUILDING :**

9.1.1. The LANDLORD shall maintain the exterior of the building housing the PREMISES (with the exclusion of doors, plateglass and windows) in a good, hygienic, clean and tidy condition during the currency of the Agreement, provided, however that, if the exterior of the building housing the PREMISES is rendered untidy or unhygienic or is damaged in consequence of an act or omission on the part of the TENANT and/or employee or agent of the TENANT, the TENANT shall be obliged to make same good with due promptitude.

9.1.2. The LANDLORD shall be entitled to erect or have erected such building equipment as is necessary for the fulfilment of the obligation imposed in the preceding sub-paragraph, and the LANDLORD and/or any agent of the LANDLORD shall in furtherance of the foregoing (and, if reasonably necessary) have the right of access to the PREMISES at all reasonable times.

**9.2. STRUCTURAL DEFECTS :**

The LANDLORD shall as expeditiously as is feasible attend to the repair of any structural defects to the PREMISES (both exterior and interior) subject, however, to the LANDLORD'S right to claim damages from the TENANT in the event of such structural defects being attributable to any act or omission on the part of the TENANT and/or employee or agent of the TENANT.

9.3. **"TO LET" NOTICE :**

The LANDLORD or the LANDLORD'S agent shall be entitled to have a "TO LET" notice installed in the PREMISES and prominently displayed (but with reasonable regard to the rights of the TENANT) from a date not more than 90 (NINETY) days prior to the expiration of this Agreement, and shall, moreover, during the period be entitled to visit and inspect the PREMISES with potential TENANTS or potential occupiers thereof at all reasonable times.

9.4. **RIGHT OF INSPECTION :**

The LANDLORD or the LANDLORD'S agent shall be entitled to inspect the PREMISES at all reasonable times.

9.5. **OBLIGATION TO COMPENSATE :**

Without prejudice to the TENANT'S rights to oblige the LANDLORD to effect the renovations and repairs outlined in sub-paragraphs 9.1 and 9.2 above as expeditiously as is reasonably feasible, the TENANT shall have no claim upon the LANDLORD as result of -

- 9.5.1. the fact that the PREMISES and/or the property of the LANDLORD are not properly maintained ;
- 9.5.2. any loss of damage sustained by the TENANT from whatever cause, save for such loss or damage as is sustained by the TENANT in consequence of a breach of contract by the LANDLORD in terms of this Agreement;
- 9.5.3. any loss or damage suffered by the TENANT in consequence of a change of name of the building housing the PREMISES.

9.6. **ALTERATIONS :**

The LANDLORD shall have the right at any time during the term of this Agreement to effect such alterations to either the PREMISES and/or the fittings and/or the appurtenances thereof as the LANDLORD may lawfully be called upon to do by any competent Authority. It is clearly understood by the parties that any alteration required to be done to the PREMISES or the building housing the PREMISES in consequence of the business conducted



by the TENANT shall be effected by the LANDLORD only if the LANDLORD is obliged by the said Authority to have the same effected and these latter alterations shall be effected for the account of the TENANT. For the foregoing purpose the LANDLORD or the agent of the LANDLORD shall, if necessary, have the right of access at all reasonable times to the PREMISES, but with reasonable regard to the rights of the TENANT.

10. **DAMAGE TO, OR DESTRUCTION OF, PREMISES:**

10.1. **TOTAL DESTRUCTION :**

10.1.1. In the event of the PREMISES being destroyed or damaged to an extent which totally prevents the TENANT from beneficially occupying the **PREMISES**, then:-

10.1.1.1. The TENANT shall have no claim of whatever nature against the LANDLORD as a result thereof, and not be responsible for any rental for the period during which the TENANT is deprived of the beneficial occupation of the PREMISES;

10.1.1.2. The LANDLORD shall be entitled to elect within a period of 30 (thirty) days after such destruction or damage whether or not this Agreement shall be cancelled, and shall notify the TENANT of such decision in writing;

10.1.1.3. Should the LANDLORD not notify the TENANT of its decision as referred to in sub-paragraph 10.1.1.2 above, then the LANDLORD shall be deemed to have elected to cancel this Agreement from date of such damage or destruction.

10.1.2. Should the LANDLORD be deemed to have elected to cancel this Agreement in terms of sub-paragraph 10.1.1.3 above, then neither party shall have any claim of whatever nature against the other as a result of the cancellation of this Agreement, save for any claim that may have arisen prior to such cancellation.

10.1.3. Should there be an election not to cancel this Agreement as envisaged in sub-paragraph 10.1. above :-

10.1.3.1. The LANDLORD shall as soon as is reasonably feasible and at the cost of the LANDLORD reinstate the PREMISES, failing which either party shall be entitled to cancel this Agreement



- (subject always to the provisions of sub-paragraph 10.3. below);
- 10.1.3.2. The TENANT shall not be liable for payment of any rental for the period during which the TENANT is deprived of beneficial occupation of the PREMISES;
- 10.1.3.3. In the event of the TENANT being given beneficial occupation from time to time of any part of the PREMISES, then payment of rental shall be made on a pro rata basis ;
- 10.1.3.4. The TENANT shall be obliged to retake possession and occupation of the PREMISES (either wholly or partially) upon receipt of written notice to this effect by the LANDLORD or the agent of the LANDLORD subject to :
- 10.1.3.4.1. the TENANT'S having received the said notice at least 2 (two) calender months prior to the date upon which possession and occupation is tendered;
- 10.1.3.4.2. the further proviso that, in the event of partial possession being tendered by the LANDLORD, the PREMISES are such as can be beneficially occupied by the TENANT.
- 10.1.3.5. In the event of the termination of this Agreement in any of the circumstances envisaged in this sub-paragraph (i.e. sub-paragraph 10.1.3.) neither party shall (subject always to the provisions of sub-paragraph 10.3. below) have any claim of whatever nature against the other as a result of the termination of this Agreement, save for any claim that may have arisen prior to such termination.
- 10.2 In the event of the PREMISES being partially damaged or destroyed, and the TENANT'S enjoying only partial beneficial occupation of the PREMISES :-
- 10.2.1. This Agreement shall not be terminated ;
- 10.2.2. The rental payable by the TENANT shall be proportionately reduced;
- 10.2.3. The LANDLORD shall as soon as is reasonably feasible and at the cost of the LANDLORD reinstate the PREMISES, failing which either party shall be entitled to cancel this Agreement (subject always to the provisions of sub-paragraph 10.3. below);

- 10.2.4. The TENANT shall have no claim of whatever nature against the LANDLORD as a result of the said destruction or damage or in consequence of a cancellation of this Agreement by virtue of the provisions of sub-paragraphs 10.2.3. above ;
- 10.3. In the event of intentional damage being caused to the PREMISES by the TENANT or an agent of the TENANT (or by an officer of the TENANT, if the TENANT be a company) the TENANT shall not have the right to cancel this Agreement, and the TENANT shall be liable for any damage suffered by the LANDLORD in consequence thereof ;
- 10.4 In any restoration or repair programme to be carried out by the LANDLORD pursuant to the provisions of this paragraph, the LANDLORD reserves the right to change, or vary, the form of construction of the PREMISES, but undertakes to ensure that the TENANT is granted substantially the same accommodation as regards area and position in the LANDLORD'S building as enjoyed by the TENANT prior to destruction or damage.

11. **BREACH OF CONTRACT :**

- 11.1. In the event of the TENANT'S failing to fulfil any obligation in terms of this Agreement, and so remaining in default after having received 7 (seven) days written notice to remedy such breach, the LANDLORD shall (without prejudice to the rights accorded the LANDLORD under sub-paragraph 11.2 below or at Common Law):-
- 11.1.1. Be entitled in respect of a monetary claim to demand payment thereof from the TENANT together with interest on such amount calculated at the prime bank lending rate Nedbank plus 3% per annum as and from due date to date of payment and all legal costs (including attorney and client costs and collection costs at the then ruling rate);
- 11.1.2. Be entitled in respect of any other obligation of the TENANT :
- 11.1.2.1. To enforce compliance therewith; or
- 11.1.2.2. To remedy (at the election of the LANDLORD) the TENANT'S non-performance of such obligation and to recover from the TENANT any amounts so necessarily expended by the LANDLORD in consequence thereof together with interest thereon at the prime bank lending rate Nedbank plus 3% per

- annum as and from the date of incurrence of such expenditure;
- and
- 11.1.2.3. To recover from the TENANT all legal costs (including attorney and client costs and collection costs at the then ruling rate);
- 11.2. In the event of the TENANT :-
- 11.2.1. failing to fulfil any obligation in terms of this Agreement properly or timeously, and so remaining in default after having received 7 (SEVEN) days written notice to remedy such breach,
- or
- 11.2.2. suffering a Judgment for payment of a monetary debt being entered against the TENANT by a competent Court, and permitting such Judgment to remain unsatisfied for a period of 7 (SEVEN) days after such Judgment could reasonably be deemed to have come to the TENANT'S knowledge (save where such Judgment is the subject of an appeal duly noted and prosecuted by the TENANT, in which event the LANDLORD shall only be entitled to exercise the rights accorded in terms of sub-paragraph 11.2.3. below if the appeal is not prosecuted by the TENANT or if the TENANT fails to satisfy such Judgment within 7 (SEVEN) days after the disallowance of such appeal could reasonably be deemed to have come to the TENANT'S knowledge - and, in the event of a further appeal by the TENANT, the foregoing provisions shall apply mutatis mutandis the LANDLORD shall be entitled, without prejudice to any other rights which the LANDLORD may have, to :-
- 11.2.2.1. immediately cancel this Agreement ;
- 11.2.2.2. repossess the PREMISES and eject the TENANT and any occupier from the PREMISES ;
- 11.2.2.3. claim from the TENANT payment of all arrear rentals together with interest thereon at the prime bank lending rate Nedbank plus 3% per annum as and from the due date to date of payment;
- 11.2.2.4. claim from the TENANT all such damages as the LANDLORD has suffered in consequence of such cancellation ;

- 11.2.2.5. claim from the TENANT payment of all legal costs incurred by the LANDLORD in the exercise of the rights accorded in terms of sub-paragraph 11.2 (including all attorney and client costs and collection costs at the then ruling rate);  
or
- 11.2.3. As an alternative to the aforementioned remedies, the LANDLORD shall in any of the aforementioned events in the sole discretion of the LANDLORD be entitled to terminate this Agreement, and permit the TENANT to remain in occupation of the PREMISES on a monthly tenancy terminable by the LANDLORD upon 1 (ONE) calendar month's written notice to be given to the TENANT, but subject in all other respects to all the terms and conditions of this Agreement, and further subject to the TENANT'S being liable for all legal costs (including attorney and client costs and collection costs at the then ruling rate) incurred by the LANDLORD in consequence of such breach of contract.
- 11.3 In the event of the LANDLORD'S cancelling this Agreement, and the TENANT disputing this right and remaining in occupation of the PREMISES, the TENANT shall, pending the determination of such dispute, continue to pay an amount equivalent to the monthly rental in advance on or before the 7th (SEVENTH) day of each and every month, and the LANDLORD shall be entitled to accept and recover such payments, and such payments and the acceptance thereof shall be without prejudice to, and shall in no way affect, the LANDLORD'S claim for cancellation then in dispute. Should the dispute be determined in favour of the LANDLORD, the payments made and received in terms of this clause shall be deemed to be amounts paid by the TENANT on account of damages suffered by the LANDLORD by reason of a cancellation of this Agreement and/or the unlawful holding over by the TENANT. The failure to pay any such amount shall be a breach of the lease and entitle the LESSOR inter alia to cancellation notwithstanding any prior cancellation, which may be in dispute.
- 11.4. The right and remedies of the LANDLORD pursuant to 11.1., 11.2. and 11.3. shall in no way derogate from any rights and remedies available to the LANDLORD at common law or by virtue of any Statute or other enactment.

12. **GENERAL**

12.1. **MATERIALITY OF CONDITIONS :**

This Agreement constitutes the entire Agreement between the parties, and all the terms and conditions thereof shall be deemed to be material.

12.2. **REPRESENTATIONS / WARRANTIES :**

The PARTIES acknowledge that any representations, warranties, undertakings or promises of whatever nature which may have been made or given (other than those contained herein) either by the LANDLORD or any other party shall not be binding on, or enforceable against, the LANDLORD.

12.3 **VARIATION OF AGREEMENT :**

No variation of this Agreement shall have any force or effect unless it is recorded in writing, and signed by both the LANDLORD and the TENANT, and their signatures duly attested.

12.4 **INDULGENCE BY LANDLORD :**

The rights of the LANDLORD in terms of this Agreement shall in no way be curtailed, affected or prejudiced in consequence of any concession made, or indulgence granted, by the LANDLORD or the agent of the LANDLORD to the TENANT in respect of the latter's fulfilment of any obligation imposed by this Agreement.

13. **DOMICILIA AND NOTICES :**

13.1 For all purposes of this Agreement including the giving of notice and service of legal process, the parties respectively choose domicilium citandi et executandi as follows :-

13.1.1. The LANDLORD at : c/o Symington & De Kok, Ground Floor, Vineyard Square South, The Vineyards Office Estate, 99 Jip De Jager Drive, Tygervalley, Bellville; (reference G Rehbock or C Krumm);

13.1.2. The TENANT at : the premises hereby let.

13.2 A party may at any time change the address chosen in terms of this Agreement by notice in writing to the other party, provided that the new address is in the Republic of South Africa and is not a Post Box or a Poste Restante.

13.3 **NOTICES :**

13.3.1. An notice given in connection with this Agreement shall :

13.3.1.1. Be delivered by hand ;

- or
- 13.3.1.2. Be sent by prepaid registered post;
- or
- 13.3.1.3 Be sent by telefax;
- to the address chosen by the party concerned (or in the case of notices sent by telex or telefax to the applicable telex or telefax number, as the case may be, referred to in this Agreement).
- 13.3.2. Any notice given in terms of 13.3.1. shall be deemed to have been duly given ;
- 13.3.2.1. If delivered in terms of 13.3.1.1. on the Effective Date ;
- 13.3.2.2. If sent by post in terms of 13.3.1.2., 4 (FOUR) days after posting;
- 13.3.2.3. If sent by telefax in terms of 13.3.1.3. on the date that the telefax is transmitted.

14. **LAWS OF THE REPUBLIC OF SOUTH AFRICA**

The rights and obligations of the parties to this Agreement and all matters or disputes arising therefrom shall be determined and adjudged in accordance with the Laws of the Republic of South Africa.

15. **JURISDICTION :**

Any legal proceedings which the one party may institute against the other for the enforcement of any rights under this Agreement may be instituted in the Magistrate's Court of any district having jurisdiction by virtue of the provisions of the Magistrates' Court Act, No. 32 of 1944, as amended (or any legislation passed in substitution therefor) and the party so to be sued hereby consents to such jurisdiction in terms of Section 45 of the said Act (or of any legislation passed in substitution therefor). Notwithstanding the foregoing, the party desirous of instituting legal proceedings against the other party, may in the sole discretion of such party, institute such proceedings in the High Court of South Africa where a Magistrate's Court would not normally have jurisdiction, and in such event the consent of the other party in terms of Section 45 of the said Act (or any legislation passed in substitution therefor) referred to above, shall be deemed not to have been given, and the legal costs awarded shall be determined in accordance with the ruling tariff of the High Court of South Africa.

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16. **COSTS :**

The fees and VAT calculated thereon and disbursements due to Messrs. Symington & De Kok attorneys of Ground Floor, Vineyard Square South, The Vineyards Office Estate, 99 Jip De Jager Drive, Tygervalley, Bellville, for the preparation and (if necessary) the registration of this Agreement and Stamp Duty and (if so be the case) of any and all Deeds of Suretyship and stamp duty thereon, and for all attendant consultations, correspondence and attendances is for the account of the TENANT, and the TENANT hereby acknowledges the obligation to the said firm of Attorneys to effect payment thereof.

**A** Full names and ID numbers of each and every signatory

A1 \_\_\_\_\_ (ID \_\_\_\_\_ )

A2 \_\_\_\_\_ (ID \_\_\_\_\_ )

A3 \_\_\_\_\_ (ID \_\_\_\_\_ )

A4 \_\_\_\_\_ (ID \_\_\_\_\_ )

**B** The signatory described at the head of this offer is/are acting (**delete what does not apply and initial deletions**)B1 in his/her/their **PERSONAL capacity** and as **SOLE PROPRIETOR/S:**

B2 as Agents and Trustees for a CLOSE CORPORATION/PRIVATE LIMITED COMPANY TO BE FORMED;

B3 as Member/s of **EXISTING CLOSE CORPORATIOIN** named:

\_\_\_\_\_ CC

having the registered number CK \_\_\_\_\_ /23 being duly authorized thereto;

B4 as Director/s of an **EXISTING COMPANY** named:

\_\_\_\_\_ (Pty) Ltd

or

\_\_\_\_\_ Limited

having the registered number / \_\_\_\_\_ /07 or / \_\_\_\_\_ /06 (as the case may be) being duly authorized thereto.

**C Premises**

C1 Number/s allocated to premises on current plans: Shop No \_\_\_\_\_

C2 Area: \_\_\_\_\_ m<sup>2</sup>C3 Outside Seating \_\_\_\_\_ m<sup>2</sup>C4 Parking: \_\_\_\_\_ covered bay/s @ R \_\_\_\_\_  
\_\_\_\_\_ open bay/s @ R \_\_\_\_\_**D Lease Period**

D1 \_\_\_\_\_ years

D2 Option to renew: N/A

D3 Commencement date: \_\_\_\_\_





D4 30 calendar days beneficial occupation for shopfitting: **Date:** \_\_\_\_\_

**E Basic Rent and Operational Costs**

E1 R\_\_\_\_\_ /m<sup>2</sup>/month + (VAT) R\_\_\_\_\_ = R\_\_\_\_\_

E2 R\_\_\_\_\_ /m<sup>2</sup>/month + (VAT) R\_\_\_\_\_ = R\_\_\_\_\_

E3 Parking: R280.00 per month per covered bay + VAT = R319.20

R100.00 per month per open bay + VAT = R114.00

E4 Escalation rate: 12 % per annum on net rental

12 % per annum on operating costs

12 % per annum on parking

**ANNEXURE A****CHECKLIST****OFFER TO LEASE DOCUMENTATION**

<b>DOCUMENT (No 1-5 inc. in offer documentation)</b>	<b>SUBMITTED TO TENANT</b>		<b>ACCEPTED BY TENANT</b>		<b>RECEIVED FROM TENANT</b>	
	<b>SIGNED</b>	<b>DATE</b>	<b>SIGNED</b>	<b>DATE</b>	<b>SIGNED</b>	<b>DATE</b>
1. Offer to lease						
2. Surety:						
3. Tenant resolution						
4. Standard retail lease						

**ANNEXURE B**

**EXTRACT FROM THE MINUTES OF A MEETING OF \_\_\_\_\_ OF  
\_\_\_\_\_ HELD AT \_\_\_\_\_ ON THE \_\_\_\_ DAY OF  
\_\_\_\_\_ 2008.**

**RESOLVED :**

1. That **CAPEGATE CRESCENT DEVELOPMENT (PROPRIETARY)  
LIMITED (Registration No. 2007/008700/07)** do/does interpose as a party to  
an Agreement of Lease with Cape Gate Crescent (Pty) Ltd (THE LANDLORD) as  
**TENANT**, in respect of the premises as set out in the Offer to Lease  
as will more fully appear from the Agreement of Lease as tabled and approved ;

**RESOLVED FURTHER :**

2. That \_\_\_\_\_  
in his/her capacity as \_\_\_\_\_ be and is hereby authorised and  
empowered to sign the aforementioned Agreement on behalf of the said  
Company/Close Corporation/Partnership/ Sole Proprietorship/ Trust.

**Certified a true copy**

.....

**DATE:** .....

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**ANNEXURE D**

**DEED OF SURETYSHIP**

I/WE, the undersigned,

.....

do hereby interpose and bind myself/ourselves, jointly and severally, as surety/ies for and co-principal debtor/s *in solidum*, unto and in favour of

**CAPEGATE CRESCENT DEVELOPMENT (PROPRIETARY) LIMITED**  
**(Registration No. 2007/008700/07)**

(hereinafter referred to as "the CREDITOR"), for the payment on demand of all sums of money which

.....

(hereinafter referred to as "the DEBTOR"), may now and from time to time hereafter owe or be indebted to the CREDITOR under or arising out of an Agreement of Lease in respect whereof this Deed of Suretyship constitutes Annexure "S", including (but without limitation) damages, legal costs, interest, discount or other charges and in relation to any immovable property, any imposts of whatever nature.

I/WE jointly and severally agree and acknowledge that:-

1. This Suretyship shall apply to cover and secure the CREDITOR and the latter's respective successors-in-title, orders or assigns and/or in the event of the CREDITOR being an individual, his heirs, executors, administrators or assigns.
2. It shall always be in the discretion of the CREDITOR to determine the nature, extent and duration of the facilities (if any) to be allowed to the DEBTOR.
3. The CREDITOR shall be at liberty to release securities or other sureties for the DEBTOR and to extend any arrangements with the DEBTOR or me/us or any of us or any other sureties for the DEBTOR, and no such action on the part of the CREDITOR shall affect or in any way be construed or operate as a waiver or abandonment of any of the CREDITOR's rights or claims against me/us or any of us hereunder.
4. All acknowledgements of indebtedness and admissions by the DEBTOR shall be binding on me/us.

- 
5. In the event of the insolvency, liquidation, sequestration, assignment or placing under judicial management of the estate of the DEBTOR, or in the event of a compromise between the DEBTOR and any creditors of the DEBTOR: -
- 5.1 I/we undertake not to prove a claim against the DEBTOR's estate for any amount I/we may be called upon to pay under this Suretyship, until all amounts (including interest and costs) due by the DEBTOR to the CREDITOR have been paid in full;
- 5.2 I/we hereby agree that notwithstanding any part-payment by or on behalf of me/us to the CREDITOR, I/we shall have no right to any cession of action in respect of such part-payment, and shall not be entitled to take any action against the DEBTOR or against any other surety for the DEBTOR in respect thereof, unless and until the indebtedness of the DEBTOR to the CREDITOR shall have been discharged in full;
- 5.3 I/we agree that any dividend received from the DEBTOR by the CREDITOR in respect of the CREDITOR's claim against the DEBTOR, shall be appropriated in the first instance to the payment of that part (if any) of the DEBTOR's indebtedness to the CREDITOR which is not covered by this Suretyship;
- 5.4 No dividends or payments which the CREDITOR may receive from the DEBTOR or any other surety or sureties or from me/us or any of us, shall prejudice the CREDITOR's right to recover from me/us or the other or others of us, to the full extent of this Suretyship, any sum which, after the receipt of such dividends or payments, will remain owing to the CREDITOR by the DEBTOR;
- 5.5 Notwithstanding any payments received by the CREDITOR from me/us or any of us in terms hereof, the CREDITOR shall be entitled to prove a claim against the estate of the DEBTOR for the full amount of the indebtedness of the DEBTOR at the date of insolvency, liquidation, sequestration, assignment, judicial management or compromise, as the case may be.
6. The CREDITOR shall have the right to appropriate any moneys received by the CREDITOR from me/us or any of us in terms hereof, to such indebtedness of the DEBTOR to the CREDITOR as the CREDITOR shall decide.
7. Without prejudice to anything herein before contained, this Suretyship shall apply to and cover the CREDITOR in respect of claims which the CREDITOR may have acquired or in the future may acquire against the DEBTOR from any party whatsoever or whomsoever.

8. This Suretyship shall be in addition and without prejudice to any other Suretyship/s or security/ies now or at any time hereafter held by the CREDITOR in respect of the liabilities or obligations of the DEBTOR to the CREDITOR.
9. Should the CREDITOR cede the CREDITOR's claim/s against the DEBTOR to any third party/ies, then this Suretyship shall be deemed to have been given by me/us to such cessionary/ies, who shall be entitled to exercise all rights in terms of this Deed of Suretyship as if such cessionary/ies were the CREDITOR.
10.
  - 10.1 The amount of the DEBTOR's indebtedness and of me/us hereunder to the CREDITOR at any time, and the fact that the due date of payment of the whole or, as the case may be, portion of such amount has arrived, shall be determined and proved by a certificate signed by the CREDITOR's auditors for the time being.
  - 10.2 A certificate in terms of 10.1 shall be: -
    - 10.2.1 binding on me/us; and
    - 10.2.2 prima facie proof of the amount of my/our indebtedness hereunder; and
    - 10.2.3 valid as a liquid document against me/us in any
    - 10.2.4 competent court for the purpose of obtaining provisional sentence or judgement against me/us thereon.
  - 10.3 At the option of the CREDITOR, any claim against me/us arising hereunder may be brought in any Magistrate's Court having jurisdiction, notwithstanding that the amount of the claim may exceed the jurisdiction of the said Magistrate's Court.
11. Should I/we at any time in defending any action based on this Suretyship allege that:-
  - no money was paid over by the CREDITOR's to the DEBTOR; and/or
  - there is no reason or cause for the DEBTOR's obligations to the CREDITOR; and/or
  - errors have been made in the calculation of the amount claimed, then the onus of proving such a defence will rest on me/us.
12. I/we renounce the benefits of:-
  - 12.1 exclusion – by renouncing this benefit I/we understand that the CREDITOR becomes entitled to sue me/us for the full amount owing under this Suretyship without first proceeding against the DEBTOR;

- 12.2 division – by renouncing this benefit I/we understand that where there is more than one surety for the DEBTOR's obligations, the CREDITOR will be entitled to sue each such surety for the full amount owing under this Suretyship and not only for a pro rata share;
- 12.3 cession of action – by renouncing this benefit I/we understand that the CREDITOR becomes entitled to sue me/us without first ceding the CREDITOR's right of action against the DEBTOR to me/us.
13. Inasmuch as any signatory/ies hereto is/are a company/ies, then each such company does hereby warrant and represent to the CREDITOR that it is duly empowered by its Memorandum of Association to enter into this Suretyship, and that it has a material interest in securing the indebtedness covered by this Suretyship, which is entered into for its direct or indirect benefit. The person/s signing this Suretyship on behalf of any company shall be deemed by virtue of such signature/s to be party to the foregoing warranties and representations in his/her/their personal capacity/ies, jointly and severally with the said company, and shall further be deemed to warrant and represent to the CREDITOR that such person/s is/are duly authorized to execute this Suretyship on behalf of such company. The foregoing provisions shall apply, *mutatis mutandis*, where the signatory/ies is/are a close corporation/s.
- 14.
- 14.1 I/we choose *domicilium citandi et executandi* for all purposes under this Suretyship at the above address/es, set out against my/our name/s.
- 14.2.1 All notices addressed to me/us shall be sent by pre-paid registered post to my/our respective address/es above, and shall be deemed to have been received by me/us five (5) days after such posting thereof.
15. As security for the due payment by me/us of all my/our liabilities to the CREDITOR arising under this Suretyship, and for the due performance of all my/our other obligations arising hereunder, I/we hereby cede, assign, transfer and make over to the CREDITOR all my/our right, title and interest in and to all claims of whatsoever nature and howsoever arising which I/we may now or in the future have against the DEBTOR. I/we undertake to do all such things as are necessary, whenever requested so to do by the CREDITOR, to enable the CREDITOR to prove any claim against the DEBTOR for the amount/s so ceded to the CREDITOR in terms hereof and/or to enable the CREDITOR to calculate the exact amount of such claim/s, and without limiting the generality of the aforesaid, I/we undertake to make available to the



CREDITOR, upon being requested to do so, all such books, documents and other vouchers as reflect or prove any portion of my/our said claim/s hereby ceded.

THUS DONE AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_,  
in the presence of the undersigned witnesses:-

**Witnesses:**

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





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**ANNEXURE E**  
**LAYOUT PLAN**