



1. **WALTER SISULU LOCAL MUNICIPALITY**

(hereinafter referred to as "WSLM")

she being duly authorised thereto by virtue of a Power of Attorney granted to her at **Burgersdorp** on the ..<sup>th</sup> day of .....**2024** by **KHAYA GASHI** in his capacity as **MUNICIPAL MANAGER**, he in turn being duly authorized thereto by the appropriate **Resolution no: .....**, signed at **Burgersdorp** on ..... **2024**, which Power of Attorney and a certified copy of which Resolution have been exhibited to me and now remain filed in my Protocol;

("the Lessor")

And

in her capacity as duly authorized Attorney and Agent of

2. **LIMAKATSO BOUTIQUE HOTEL PROPRIETARY LIMITED** Registration Number **2021/433724/07**, in Consortium with **LOUIS LATEGAN SAFARI CC** Registration Number **2001/045388/23** and **CRL BEAUTY SCHOOL PROPRIETARY LIMITED** Registration Number **2012/FE07/008** (hereinafter referred to as **LIMAKATSO TSA MALETSWAI CONSORTIUM (LTMC)**) she being duly authorised thereto by virtue of a Power of Attorney granted to her at on the     day of                     by **MS. MAMELLO LIKOBO** in her capacity as a **REPRESENTATIVE** of the **LIMAKATSO TSA MALETSWAI CONSORTIUM**, duly authorised thereto by a Resolution of the Consortium signed at                     on day of             2024.

("the Lessee")

which Powers of Attorney and a certified copy of which Resolution have been exhibited to me and now remain filed in my Protocol.

**WHEREAS** the Lessor is the registered owner of the undermentioned immovable property, namely:

**A PORTION OF ERF 790**

**ALIWAL NORTH**

**WALTER SISULU LOCAL MUNICIPALITY**

**DISTRICT OF ALIWAL NORTH**

**PROVINCE OF THE EASTERN CAPE**

**IN EXTENT: 55.6628 hectares (Measuring 6 380 square metres)**

Held under Deed of Transfer No. T16274/2010

(hereinafter referred to as “**the Leased Premises**”)

**AND WHEREAS** the Lessor wishes to lease to the Lessee who wishes to lease from the Lessor the Leased Premises, commonly known as **Aliwal Spa Holiday Resort “Aliwal Spa”** (as more fully indicated on the diagram annexed to this Notarial Lease Agreement marked ANNEXURE “A”)

**AND WHEREAS** the Lessee wishes to lease the Leased Premises from the Lessor and the Lessor wishes to lease out the Leased Premises to the Lessee for the commercialisation, design, develop renovate, refurbishment, upgrading, construction, operation, maintenance and finance of municipal property by the lessee for the further development of the Aliwal Spa;

**AND WHEREAS** the Lessee will apply in terms of the relevant Legislation for a Permit to develop, operate and manage Aliwal Spa on the property as set out above;

**AND WHEREAS** the Lessee is to become an operating permit holder to develop, operate and manage the Aliwal Spa;

**AND WHEREAS** the parties acknowledge that there is no formal agreement between them regulating the Walter Sisulu Local Municipality's desire for the formal development and/or refurbishment of the land as per its integrated development plan (IDP), the use of the said property site, for all Aliwal Spa requirements, this agreement is binding, unless a separate agreement binds the parties for joint use, and conditions to be defined in the agreement;

**AND WHEREAS** the Parties wish to incorporate provisions *inter alia* to monitor the Lessor and the Lessee's obligations in terms of this Lease and to regulate aspects which are not otherwise regulated by Statute;

**AND WHEREAS** the parties have accordingly agreed to the following terms and conditions subject to which the property is let by the Lessor to the Lessee.

**NOW THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. PARTIES**

1.1. This Agreement is entered into by and between the following parties:

1.1.1. **WALTER SISULU LOCAL MUNICIPALITY**, with its registered address at Corner Church and Greyling Street, Burgersdorp, 9744; and

- 1.1.2. **LIMAKATSO BOUTIQUE HOTEL PROPRIETARY LIMITED** Registration Number **2021/433724/07**, a private company with limited liability incorporated in accordance with the laws of the Republic of South Africa, in Consortium with **LOUIS LATEGAN SAFARI CC** Registration Number **2001/045388/23** and **CRL BEAUTY SCHOOL PROPRIETARY LIMITED** Registration Number **2012/FE07/008** (hereinafter referred to as **LIMAKATSO TSA MALETSWAI CONSORTIUM (LTMC)**) with its registered address at 28B, Duncan Street, Maletswai, 9750.

## 2. INTRODUCTION

- 2.1. The Lessor is desirous of developing, refurbishing and commercialisation of the Aliwal Spa Resort through a long term Lease agreement on the Leased Premises.
- 2.2. The Lessor identified the Opportunity and has requested the Lessee after successful bidding to:
- 2.2.1. enter into the Lease Agreement; and
  - 2.2.2. the Lessee to invest on business and transaction principles to ensure full operations of the Aliwal Spa Holiday Resort, refurbish, construct where necessary and other improvements on the Property, which will constitute the Leased Premises to be used by the Lessee for the purpose of opening, refurbishment, development and commercialisation of the Aliwal Spar Holiday Resort.
- 2.3. Once the Lessee has fulfilled the Refurbishments, maintenance and Development Obligations in terms of this Agreement, the Lease (subject to the provisions of clause 6.2 shall commence on the Commencement Date, and the Lessee will commence with the payment of the Gross Rental.

- 2.4. It is the intention of the Parties that the Lease will constitute a so-called “triple net lease” in terms of which all expenses relating to the Leased Premises (save as expressly stated otherwise) including rates taxes, utility charges, and maintenance will be paid by the Lessee.

### **3. DEFINITIONS AND INTERPRETATION**

#### **3.1. In this Agreement:**

- 3.1.1. clause and annexure headings are for the purposes of convenience and reference only and do not govern or affect the interpretation of this Agreement;
  - 3.1.1.1. a reference to:
  - 3.1.1.2. any particular gender shall include the other genders;
  - 3.1.1.3. the singular shall include the plural and vice versa; and
  - 3.1.1.4. a natural person shall include a juristic person, firm, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality) and vice versa;
- 3.1.2. all of the annexures hereto form an integral part of this Agreement;
- 3.1.3. words and/or expressions defined in this Agreement shall bear the same meanings in the annexes hereto which do not contain their own defined words and/or expressions. To the extent that there is any conflict between the annexures to this Agreement and the provisions of this Agreement, the provisions of this Agreement shall prevail;

- 3.1.4. any number of days prescribed in this Agreement shall exclude the first day and includes the last day;
- 3.1.5. where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended that day to be the next Business Day;
- 3.1.6. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 3.1.7. if any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Agreement;
- 3.1.8. if figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail;
- 3.1.9. the rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply;
- 3.1.10. any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time thereafter;
- 3.1.11. any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time;

- 3.1.12. a reference to a Party includes that Party's successors-in-title and permitted assigns;
  - 3.1.13. unless specifically provided to the contrary, all amounts referred to in this Agreement are exclusive of VAT;
  - 3.1.14. the termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.
- 3.2. Any provision of this Agreement imposing a restraint, prohibition or restriction on the Lessee shall be so construed that: the Lessee is not only bound to comply therewith but is also obliged to procure that the same restraint, prohibition or restriction is observed by everybody occupying or entering the Leased Premises or any other part thereof through, under, by arrangement with, or at the invitation of, the Lessee, including (without limitation) the guests, contractors or invitees of the Lessee.
- 3.3. In this Agreement, unless the context otherwise indicates, the following expressions shall bear the following meanings:
- 3.3.1. **“Agreement”** means the agreement set out in this document, together with all annexures hereto;
  - 3.3.2. **“Aliwal Holiday Spa Resort”** means the holiday resort which comprises of structures, pools, chalets, hydro spa, ablution blocks. Change rooms, caravan parks, sores and laundries as listed in terms of reference;



- 3.3.3. **"the Accountants"** mean an accountant appointed by agreement between the parties and failing agreement, appointed by the President of the South African Institute of Chartered Accountants, or its successor;
- 3.3.4. **"Commencement Date "** means the date of commencement of the Lease Period, being the date as the Parties may agree in writing or the date on which the Lessee commences the refurbishment, development and commercialisation on the Aliwal North Spa Holiday Resort, provided that the Lessee has complied with all the requirements and/or conditions issued by the Lessor, failing which the Commencement date will be the date upon which the Lessor is satisfied that the Aliwal Spa Resort is compliant for use and has been issued a certificate to that effect.
- 3.3.5. **"Conditions Precedent"** means the suspensive conditions set out in clause 5.1;
- 3.3.6. **"Developer"** means a company appointed by the Lessee, whose specific purpose will be to enter into the agreement with the Lessee for the purposes of executing the objectives of this Lease Agreement;
- 3.3.7. **"Development"** means the construction of a purpose built building and other improvements on the Property in accordance with the Holiday Resort Building Specifications, which will constitute the Leased Premises to be used by the Lessee for the purpose of opening, refurbishment and running the Aliwal Spa Holiday Resort;
- 3.3.8. **"Development Agreement"** means the development agreement to be entered into, pursuant to this Lease Agreement between the

Developer, the Lessee and the Lessor (the Council) to the mutual satisfaction of the Lessor and the Lessee in terms of which the Development is to be undertaken in accordance with the Development Obligations;

- 3.3.9. **“Development Cost”** has the meaning ascribed thereto in the Development Agreement;
- 3.3.10. **"Development Obligations"** the obligations relating to the undertaking and bringing to completion the construction of a purpose built building and other improvements on the Property in accordance with the Holiday Resort Building Specifications, which will constitute the Leased Premises to be used by the Lessee for the purpose of opening, refurbishment and running the Holiday Spar Business as set out in the Agreement
- 3.3.11. **“EBITDAR”** means earnings before interest, taxes, depreciation, amortisation and Rent Paid to the Landlord;
- 3.3.12. **“Fair Market Value”** has the meaning ascribed thereto in clause 255;
- 3.3.13. **"Gross Rental"** means the gross monthly Rental and the Operating Costs;
- 3.3.14. **“Holiday Resort License”** means the licence to be issued by the Department of Trade and Industry before occupation of the Leased Premises;
- 3.3.15. **“Lease Period”** means a period of 30 (thirty) years commencing on the Commencement Date;

- 3.3.16. **"Leased Premises"** the leased premises as described on Annexure "A";
- 3.3.17. **"MFMA"** means the Municipal Finance Management Act, 2005 as amended;
- 3.3.18. **"Operating Costs"** means all costs associated with the Leased Premises;
- 3.3.19. **"Opportunity"** means the opportunity to undertake the commercialisation on the Leased Premises for commercial gain;
- 3.3.20. **"Parties"** means the "Lessor" and "Lessee", and any reference to "a Party" shall refer to one of the relevant Parties as required by the context;
- 3.3.21. **"Property"** means the properties indicated as A Portion of Erf 790 Aliwal North, Walter Sisulu Local Municipality, District of Aliwal North, Province of The Eastern Cape measuring 55,6628 Hectares in extent as indicated on the Diagram marked Annexure A hereto;
- 3.3.22. **"Renewal Period"** means a further period of 30 (thirty) years, commencing at the end of the initial lease period;
- 3.3.23. **"Rental"** means the monthly rental amount as indicated in this Agreement (excluding any VAT that may be payable) for the rental of the Leased Premises calculated with reference to costs provided by a Property Valuer
- 3.3.24. **"Termination Date"** means (unless this Agreement is otherwise terminated in accordance with its terms), the last day of the Lease Period;

3.3.25. **“Uncontrollable Event”** means any circumstance beyond the reasonable control of either Party, including (without limitation) flood, pandemics, endemics, fire, earthquake, war, restrictions by any relevant authority, pandemics, acts of God, strikes, lockouts, casualties, labour difficulties, inability to procure materials, failure of power, applicable laws, riots, insurrection, accidents against which reasonable prudence could not have provided, or any act or omission on the part of a third party; and

3.3.26. **“VAT”** means any value-added tax in terms of the Value Added Tax Act 89 of 1991 or any similar tax which is imposed in place of or in addition to such tax.

#### **4. LEASE**

4.1. The Lessor hereby lets to the Lessee who hereby hires the Leased Premises subject to the terms and conditions contained in this Agreement.

4.2. This Agreement sets out the terms and conditions agreed upon between the Lessor and the Lessee in relation to such Lease.

#### **5. CONDITIONS PRECEDENT AND EXCLUSIVITY**

5.1. This Lease Agreement, save for the provisions of this clause which shall be of immediate effect, is subject to and conditional upon –

5.1.1. the Lessor issuing a Council resolution for the conclusion of this Lease as contemplated in the MFMA and in Lessor’s own asset management policies by no later than 15 December 2024; and

- 5.1.2. fulfilment of all Conditions Precedent to the Development Agreement within the later of Six (06) months from Signature Date of the Lease Agreement or the Long Stop Date, unless otherwise agreed in writing between the Parties.
- 5.1.3. The parties agree that in the event of this Notarial Lease Agreement lapsing, the parties undertake to sign the necessary termination agreement and/or documents and to take all necessary steps to give effect to the termination of this Lease Agreement.
- 5.2. Each Party shall use its best endeavours to procure the necessary resolutions and approvals contemplated in clause 5.1.1 as soon as reasonably possible before the date of execution of this Lease.
- 5.3. The Conditions Precedent set out in clause 5.1 have been inserted for the benefit of both parties and are only capable of being waived by way of written agreement amongst the parties.
- 5.4. If the Conditions Precedent are not fulfilled by the respective due dates therefore (as contained in clause 5.1) or such further period(s) as the parties may agree in writing, this Lease Agreement shall never be of any force or effect. Neither the Lessee nor the Lessor shall have any claim against each other as a result of any damages it may suffer, directly or indirectly, due to the Conditions Precedent not being fulfilled.
- 5.5. The Lessor shall not enter into any negotiations, agreements, discussions and/or undertakings with any party other than the Lessee in relation to the lease, use, development or other commercial exploitation of the Leased Premises during the period commencing on the Signature Date and terminating on the last day specified for fulfilment of any Condition Precedent not fulfilled by such date (i.e. The Lessee and the Lessor undertake to negotiate exclusively with one another in relation to

the Leased Premises until such time as the Lease Agreement becomes unconditional in accordance with its terms or lapses on account of the failure of any of the Conditions Precedent to become fulfilled/waived by the due date therefore).

## **6. DURATION**

- 6.1. Notwithstanding the Signature Date, this Lease shall commence on the Commencement Date and shall endure for a period of 30 (thirty years), the Lease Period, whereafter (subject to clause 8 below) it shall terminate on the Termination Date.
- 6.2. Notwithstanding the above, the Lessee shall be afforded access to the Leased Premises from the Commencement Date, solely for purposes of carrying out refurbishments, installations as more fully particularized in the Agreement.

## **7. RENEWAL**

- 7.1. The Lessee shall have the option to renew this Lease for a further period of 30 (thirty) years provided that such option is exercised not later than 1 (one) year prior to the termination of the Lease, giving the Lessor notice in writing to that effect, whereupon, the Lease shall, save for the rental, continue on the same terms and conditions as are stated herein, and further on condition that:

- 7.1.1. the rental for the first year of the renewal period and the subsequently annually compounding escalations thereto shall be at the going rate for the land value of the Leased Premises, including the buildings as agreed upon between the Lessor and the Lessee within 14 (fourteen) days after the exercise of such option by the Lessee. In the event of the parties not reaching consensus in this regard, the said going rate for the rental and escalation shall be determined by the expressed written views of two reputable estate agents practicing in (either, Aliwal North, East London or where they

can be sourced) and appointed for the purpose by the senior elected member for the time being of the East London branch of the Institute of Estate Agents of South Africa. Should the said two Estate Agents fail to agree, then they shall refer to a third estate agent to be similarly appointed and whose decision shall be final and binding on the Lessor and the Lessee and the Lease shall otherwise be on the same terms and conditions as this Lease save that there shall be no further right of renewal.

7.1.2. the Lessor shall not prior to the renewal period have lawfully cancelled this lease.

7.1.3. there will be no further renewal periods after expiry of the renewal period and the Lessor will take full control of the asset handed over to the Lessor together with all improvements thereon.

## **8. RENTAL**

8.1. It is recorded that no rental will be payable for the first six (06) months as from date of occupation or signature hereof until the date upon which the refurbishments and or development of the Leased Premises has been completed in terms of the Agreement after the Commencement Date of this Lease, whichever may occur first.

8.2. The obligation for rental shall commence on the first day of the month following the exempted rental period as indicated in clause 8.1 above and after completion of the aforesaid development and refurbishments, or on the first date following the month in which the 06 (six) month period referred to above expires.

8.3. The rental payable for the initial 06 (six) month period, shall amount to **R55 000.00 (Fifty-Five Thousand Rand)** per month.

- 8.4. Thereafter, from the 13<sup>th</sup> (thirteenth) Month to the 24<sup>th</sup> (twenty fourth (month) the rental shall amount to **R79 167.00 (Seventy-Nine Thousand One Hundred and Sixty-Seven Rand)** per month, whereafter the rental shall escalate annually at the rate of 10% with effect from the 25<sup>th</sup> (twenty fifth (month)).
- 8.5. The rent payable shall be paid by the Lessee monthly and by no later than the 7th day of the following calendar month;
- 8.6. All amounts payable by the Lessee in terms of this lease shall be paid free of deduction to any bank account to which the Lessor may in writing direct or in such other manner the Lessor may in writing direct.

## **9. LIMITATION OF CLAIMS AND RIGHT TO WITHHOLD RENT**

- 9.1. Subject to clause 13.1, the Lessor shall not be responsible for any damage or inconvenience which the Lessee may suffer owing to any difficulties from time to time in the supply of electric current, water, air-conditioning or other amenities or the complete cessation of such amenities. Without detracting from the foregoing and for the sake of clarity, the Lessee shall not be entitled to withhold Rental nor have any claim or right of action whatsoever against the Lessor for any damages, loss or otherwise.

## **10. SUITABILITY OF PREMISES**

- 10.1. The Lessee will refurbish and/or develop in accordance with the Holiday Resort Building Specifications at the special and instance and request of the Lessee and consequently the Lessor does not warrant that the Lessee will be granted licences or permits in respect of the Leased Premises for the conduct of any business or that any licence or permit will be renewed from time to time.
- 10.2. If any authority of competent jurisdiction requires any alterations or additions to be affected to the Leased Premises as a condition of the grant or renewal of any



licence required by the Lessee in order to enable it to carry on its business, the Lessor shall not be obliged to undertake such work, which work may be undertaken by the Lessee with the Lessor's prior written consent, which consent shall not be unreasonably withheld or delayed.

## **11. COMPLIANCE WITH LAWS AND TITLE DEEDS**

- 11.1. The Lessee shall comply with all applicable laws relating to lessees or occupiers of the Leased Premises or affecting the conduct of any business carried on or in the Leased Premises. The Lessee shall not contravene or permit the contravention of any of the conditions of title under which the Leased Premises or Property is held by the Lessee in terms of any of the provisions of the town planning scheme applicable to the Leased Premises.
- 11.2. Without detracting from the above, the Lessee shall comply with all conditions of the Holiday Resort Licence in relation to the conduct of its business inclusive of the Aliwal Spa Holiday Resort Business. In addition to the foregoing, any cancellation, revocation, suspension, termination or withdrawal of the Holiday Resort Licence shall constitute a material breach of this Agreement by the Lessee.
- 11.3. The Lessor will abide by and comply with such governmental, provincial, Local Authority or other laws, ordinances, regulations or by-laws as may be applicable or become applicable to the Leased Premises and the Lessee's activities thereon.
- 11.4. The Lessor will not do anything on the Leased Premises or permit or cause anything to be done which in the opinion of the Lessee constitutes a nuisance or may cause inconvenience to or in any way affect the peace and comfort of the Lessee or any patients or staff.
- 11.5. The Lessor will not contravene or permit the contravention of any of the conditions of title under which the Leased Premises is held by the Lessor or any of the provisions of the town-planning schemes applicable to the Leased Premises.

## **12. USE AND CHANGES OF USE OF THE LEASED PREMISES**

- 12.1. Subject to the provisions of the MFMA and any other law, regulation or authority and subject to the terms of this Lease Agreement, the Lessee shall, unless otherwise provided in this lease, have the right, while this lease remains in force, to use the Leased Premises for carrying out its activities relating to lawful commercial use of the Lessor's land for Lessor's commercial gain and its own commercial gain. For such purpose the Lessee shall have and enjoy the undisturbed use of the Leased Premises and any improvements pertaining thereto.
- 12.2. The Lessee may only use the Leased Premises for the purposes agreed upon with the Lessor in the Lease Agreement and the continuation of any lawful activity carried out on such property as at the Commencement Date. Such other lawful activities may not be materially increased in scope or extent, without the written approval of the Lessor, being had and obtained, which approval will not be unreasonable withheld or delayed.
- 12.3. The Lessee may only vary the use of the Leased Premises or any portion thereof with the approval of the Lessor, which consent the Lessor shall not unreasonably withhold or delayed, subject to the following: -
- 12.3.1. if the Lessee wishes to change the use of any portion of the Leased Premises other than as provided for by this Lease Agreement, or approvals given in terms thereof or other than as envisaged in terms of any business development undertakings given by the Lessee at any time to the Lessor and agreed to by the Lessor in writing, the Lessee shall make written application to the Lessor, specifying all material particulars of the change, including the area of Leased Premises affected, the present use, the intended use, a time table for the change of use, the reasons for the change of use, a preliminary environmental impact study, the impact on the Lessee's

employees and third party rights in respect of the affected area of the Leased Premises and the Lessee's proposals in regard to the Rental payable for such area of Leased Premises;

12.3.2. the Lessor may (within 90 (ninety) days or such further period as may be reasonable in the circumstances) either: -

12.3.2.1. refuse the application; or

12.3.2.2. accept the Lessee's proposals; or

12.3.2.3. request further information from the Lessee, including a comprehensive proposal for development and refurbishment of the Aliwal Spa Holiday Resort and any other investigation necessary or incidental to comply with any relevant laws which may be applicable;

12.3.3. if the Lessor declines the application, the Lessee may request that the Lessor provide reasons for its refusal, which reasons shall be provided within 30 (thirty) days of such request;

12.3.4. if the Lessor agrees to the change of use in terms of the application, the Lessor may impose such conditions as are reasonable having regard to the proposals submitted by the Lessee to protect the Leased Premises. If the Lessor is agreeable to the change of use of the affected area of Leased Premises, but requires additional consideration for such change of use, in excess of that proposed by the Lessee or if it is not in agreement with the reduction of Rental proposed by the Lessee as part of the application for the change of use referred to in clause 12.3.1, the Lessor shall notify the Lessee accordingly. The Lessor and the Lessee shall negotiate in good faith with a view to resolving the amount of Rental to be paid as a result of such change of use. However, in the event that the Lessor and

the Lessee are not able to agree on the revised Rental for the Leased Premises (or the applicable portion thereof) within 60 (sixty) days after the date upon which the Lessor advises the Lessee of the Rental it requires, either party may refer the matter to a Registered valuer for a determination and the provisions of clause 12.3.1 shall apply *mutatis mutandis*. The change in consideration for the use shall take effect from the date of change of use, unless agreed to the contrary in writing the parties agree in writing to another date for such change in the consideration, which agreement the Lessor undertakes not to unreasonably withhold or delay;

- 12.3.5. the Lessor shall be deemed to be acting reasonably if its reason for not approving a change of use is that it prefers that the respective Leased Premises should continue to be used for its existing purposes, provided that the Lessor shall act in good faith in determining its preference and provided further that the Lessor shall not be entitled to withhold its consent to a change of use if the Lessee establishes that it is not economically viable to continue with the agreed commercial activity in respect of any particular area of the Leased Premises. In the event of a dispute between the parties as to whether the agreed commercial activity is viable or not, the dispute shall be referred to arbitration in terms of clause 25;
- 12.3.6. if, at the Commencement Date circumstances existed in terms of which the Leased Premises is occupied by neighbouring or other communities or groups of individuals or squatting thereon by unauthorised occupants in a manner which prevents or interferes with the Lessee's use thereof, it shall not prevent the Lessee from applying for a change of use in terms of this clause;
- 12.3.7. in the event that the circumstances exist as referred to in clause 12.3.6 then and in that event the Lessor will take all necessary steps

to have the Leased Premises unoccupied, the Lessee may elect to have the Leased Premises entirely unoccupied at the Commencement Date of this lease. In the event that the Lessee makes such election and the Lessor fails to provide unencumbered, unoccupied and vacant occupation to the Lessor, such failure shall constitute a material breach of the Lease Agreement and the Lessee may at its election recover on demand any costs incurred by it (inclusive of legal costs on an attorney and own client scale) to procure unencumbered, unoccupied and vacant occupation from the Lessor;

12.3.8. it will be incumbent upon the Lessee to obtain all necessary approvals and consents which may be required to carry on any activity arising out of such change of use;

12.3.9. In the event of a change of use of the Leased Premises, to the extent that such change of use is attributable to the actions of Lessor, the Lessor undertakes to assist the Lessee to obtain all requisite approvals and consents the Lessee may require to comply with such change of use;

notwithstanding the foregoing, the Lessor may issue consents to changes of use of a general nature to the Lessee or in general terms for defined areas and on specific terms and conditions and may, by way of agreement with the Lessee alter, amend or rescind such consents from time to time,

### **13. WAIVER AND INDEMNITY**

13.1. The Lessee, its servants, its guests, invitees, contractors or agents shall not have any claim of whatsoever nature against the Lessor for any loss or damage however caused, whether directly or indirectly, sustained by such person in or about the

Leased Premises or Property unless such loss or damage is directly attributable to the wilful act or omission or gross negligence of the Lessor and indemnify and hold harmless the Lessor against such claim, damage, harm or loss.

- 13.2. The Lessee hereby indemnifies the Lessor against all sums which the Lessor may legally be liable to pay for any injury or loss sustained by any person caused by the negligence or wilful act or omission of the Lessee, its employees, contractors, guests, invitees or agents or for any fines or penalties and the like that may be imposed including costs incurred in defending or contesting such matters.

#### **14. ALTERATIONS TO THE LEASED PREMISES AND EQUIPMENT**

- 14.1. The Lessee shall, subject to clause 14.2, not make any extensive alterations, structural or otherwise, additions or other improvements to the Leased Premises or to any plant, equipment (excluding clinical and diagnostic equipment) or installation therein without the prior written consent of the Lessor, which shall not be unreasonably withheld, and should the Lessor consent to such alterations or additions, then the Lessee shall obtain all necessary local authority approvals and permits for such alterations or additions, and the Lessee shall if so requested by the Lessor in writing, upon termination of this Agreement, remove where possible the same and reinstate the Leased Premises or any plant, equipment or installation therein to the same condition they were in the Commencement Date (fair wear and tear excepted). Any such alterations, additions or improvements must be affected in a proper and workmanlike manner by contractors that have been approved by the Lessor in advance and strictly in accordance with any approved plans and specifications.

- 14.2. The Lessee shall, at its own cost, be entitled to affect any alterations to the exterior of the Leased Premises, including structural alterations which are reasonably required for the business of the Lessee on the Leased Premises, such alterations being subject to the consent of the Lessor, which consent shall not be

unreasonably withheld, with specific consideration being given to the requirements of the Lessee in respect of its business on the Leased Premises.

- 14.3. Save for any improvements which are removed from the Leased Premises as required by the Lessor, all improvements to the Leased Premises shall belong to the Lessor and may not be removed from the Leased Premises at any time, and the Lessee shall have no claim for compensation for any improvements to the Leased Premises and shall have no right of retention in respect of any such improvements.

## **15. MAINTENANCE AND REPAIRS**

- 15.1. The Lessee shall at its own cost and expense throughout the term of this Agreement:

15.1.1. maintain in good order and repair the interior and exterior of the Leased Premises including all waterproofing, electrical, gas, water, drainage, sanitary works, and other installations, appurtenances, fixtures and fittings as well as the terrain surrounding any buildings on the Leased Premises, but excluding any maintenance of a structural nature (i.e. the roof, walls and engineered load-bearing elements in relation to the building erected as part of the Development on the Property), and on termination of this Agreement return to the Lessor the Leased Premises with all items referred to above in good order and repair (fair wear and tear excepted);

15.1.2. where necessary, replace fixtures and fittings with articles of equal or better quality, corresponding value and appearance, which for reference purposes may include, but shall not be limited to, wash- and lavatory basins, lavatory seats, flushing apparatus, glass panes, plate glass, taps, window-, door- and cupboard locks, hinges, fittings and keys, sinks, electrical fittings including switches and plugs, gas

fittings and regulators, light bulbs, light fixtures and fluorescent lights; and

- 15.1.3. promptly repair or make good all damage to the Leased Premises irrespective of its cause, unless the damage is of a structural nature, in which event the Lessee must without delay notify the Developer of such damage and the cause of such damage immediately.
- 15.2. In the event of either Party ("**the Defaulting Party**") failing to maintain or repair the Leased Premises in accordance with its obligations stated in this clause and remaining in default for such period as the other Party ("**the Aggrieved Party**") may reasonably stipulate in a written notice calling on the Defaulting Party to remedy the default, due regard being had to the nature hereof, then the Aggrieved Party shall be entitled to effect the necessary maintenance or repairs and to claim cost so incurred from the Defaulting Party.
- 15.3. On termination of this Agreement the Lessee shall deliver the Leased Premises to the Lessor in the same good order and condition, fair wear and tear excepted, as it existed at the Commencement Date or as it existed after any upgrading work or alterations and improvements had been done pursuant to the provisions of this Agreement (fair wear and tear excepted).
- 15.4. Should any defect manifest itself in or about the Leased Premises for the repair of which the Lessee is responsible, the Lessor shall as soon as reasonably possible after the manifestation thereof give the Lessee notice of the defect. Should the Lessee fail to effect any maintenance or repairs for which it is responsible within a reasonable time after having being given written notice to do so by the Lessor, due regard being had to the nature of the maintenance or repair to be carried out, the Lessor shall be entitled itself to do so at the cost of the Lessee.

## 16. SIGNAGE



16.1. The Lessee shall be entitled to affix, paint, erect, install or display any advertising or other signage on the interior and/or exterior surfaces of the Leased Premises, including the interior and/or exterior surfaces of the building housing the Leased Premises, to the extent that the same is reasonably required for the identification of the business of the Lessee on the Leased Premises, as well as the identification of the location of the business of the Lessee on the Leased Premises, provided that the same is performed in a neat and professional manner, and further not in a manner which may reasonably jeopardize or negatively affect the business of the Lessor. The Lessor shall not be entitled to affix, paint, erect, install or display any advertising or other signage on the interior and/or exterior surfaces of the Leased Premises.

16.2. The Lessee shall:

16.2.1. at its cost erect or install the signage and remove such signage on the termination of this Agreement to restore the Leased Premises to its original condition as at the Commencement Date (fair wear and tear excepted);

16.2.2. keep and maintain such signage in good, clean and proper working order; and

16.3. indemnify the Lessor against all claims, costs and damages of whatever nature incurred by the Lessor as a result of the erection, installation or operation of such signage.

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

17.1. The Lessee shall have the right to sub-let any portion or portions of the land and buildings to be erected on the Property **ONLY** after obtaining the consent of the

Lessor. Notwithstanding the foregoing, the Lessee shall remain responsible for the compliance with the terms and conditions of this lease and shall ensure that sub-tenants comply therewith in turn.

17.2. The Lessee shall however not be entitled to cede its right, title and interest in and to this lease agreement to a third party without the prior written consent of the Lessor, which consent shall not be withheld unreasonably.

17.3. Should the Lessee be a Company, Close Corporation and or other entity or legal entity, then transfer of any of its issued shares, unissued share capital, or any future increased share capital or change in its membership whether in consequence of a sale, assignment, bequest, inheritance, operation of law or other disposition, which result in a change in the present effective voting control of the Lessee by the person or persons owning a majority of the company's shares or being a majority member on the date of signature of this lease by or on behalf of the Lessee shall be deemed to be a cession by the Lessee of its rights under this Lease Agreement and accordingly shall be subject to the Lessor's prior written consent.

## **18. MORTGAGE OF THE LEASE**

18.1. The Lessee may be required to mortgage this lease in favour of a bank in order to raise the capital required to finance the construction of the buildings. The Lessor consents to such mortgage.

18.2. Should the Lessee require additional financing, for the development of the Property, the Lessee will be entitled to further mortgage the lease or cancel any mortgage bonds and register replacement mortgage bonds in favour of another bank. The Lessor consents in advance to any such transactions.

18.3. The Lessor undertakes to and in favour of the holder of a mortgage bond or

mortgage bonds to be registered over the lease (the bondholder) that it will not cancel the lease on breach without first:

- (a) delivering to the bondholder by personal service or by registered post to such other address as the bondholder may appoint, a copy of any notice of breach served on the Lessee, and
- (b) affording the bondholder a period of 90 (ninety) days from the date of receipt of such notice within which to remedy the breach on behalf of the Lessee.

18.4. Should the bondholder foreclose on the mortgage bond registered over the Lease and sell in execution the Lessee's right, title and interest in the Lease to a Purchaser, the Lessor shall not unreasonably withhold its consent to the cession and assignment of this Lease to the Purchaser thereof.

18.5. Should the Lessee be placed in liquidation, the Lessor shall not unreasonably withhold its consent to the cession and assignment of this Lease by the Liquidator to a Cessionary nominated by the Liquidator.

18.6. Should this Lease be cancelled or terminated, the bondholder shall, forthwith upon such cancellation or termination, acquire an option to lease the Property from the Lessor upon the same terms and conditions as are contained in this Lease.

## **19. INSURANCE**

19.1. The Lessor shall be required to procure and maintain an adequate all risks insurance policy in respect of the Leased Premises in such manner form and for such cover determined by the Lessor acting its reasonable discretion The Lessee shall however be required to procure and maintain an adequate all risks insurance

policy in respect of the movable assets and/or equipment kept on or about the Leased Premises.

## **20. PRE-EMPTIVE RIGHT TO PURCHASE PROPERTY**

20.1 Should the Lessee at any time during the currency of this Lease, decide to dispose of the property, it shall deliver to the Lessee a letter giving notice of the Lessee's intention.

20.2 The Lessee will have a period of 30 (thirty) days from date of delivery of the letter within which to notify the Lessor in writing if the Lessee wishes to purchase the property. In that event, the sale will be upon the following terms and conditions:

20.2.1 The purchase price of the property will be the fair market value of the land component of the property (including improvements effected by the Lessee);

20.2.2 Should the Lessor and the Lessee fail to reach agreement on the purchase price of the land within a period of 30 (thirty) days of the date upon which the Lessee informs the Lessor of its intention to purchase the property, then the determination of the purchase price shall be referred to arbitration by two estate agents or property brokers each having not less than 10 (ten) years' experience of commercial property, one arbitrator to be appointed by the Lessor and one by the Lessee;

20.2.3 The arbitrators shall determine the purchase price within a period of 1 (one) month from the date of appointment and should they fail to

reach agreement, they shall jointly select an umpire who shall determine the purchase price within a further period of 1 (one) month;

20.2.4 Both the Lessor and the Lessee may submit written or oral representations to the arbitrators or the umpire, as the case may be. The decision of the arbitrators or umpire shall be final and binding upon all parties.

20.2.5 The Lessee shall, within 60 (sixty) days of the date on which the purchase price is agreed upon or is determined by arbitration, as the case may be, furnish the Lessor with an acceptable Bank Guarantee for the full purchase price expressed to be payable to the Lessor free of commission on the date of registration of transfer of the property;

20.2.5.1. The sale shall be voetstoots;

20.2.5.2 The Lessee shall pay transfer costs including transfer duty.

20.3. Delivery of the letter referred to in sub-clause 24.1, shall be deemed to have been received by the Lessee either on the date of physical delivery of the letter to the Lessee or on a date 10 (ten) days after the date on which the letter is posted to the Lessee by prepaid registered post to the Lessee's chosen *domicilium*.

20.4. Should the Lessee elect not to purchase the property or should the Lessee fail to respond to the letter from the Lessor, then the Lessor may sell the property to any third party subject to the terms of this Lease and subject to the Lessee's right in law, provided that the terms and conditions of such sale shall not be more favourable to such third party than those offered to the Lessee. Should the Lessee

decline to purchase the property and should the Lessor thereafter intend to offer the property to a third party upon more favourable terms, the Lessor shall be obliged once more to give the Lessee written notice of such terms as provided for in sub-clause 24.1 above and the Lessee shall have a further right to purchase the property upon such terms.

## 21. REASONABLENESS OF WITHHOLDING CONSENT

21.1. If there is a dispute between the Lessor and the Lessee as to whether the Lessor or Lessee has unreasonably withheld its consent or approval in any case where this Agreement precludes the Lessor or Lessee from withholding its consent or approval unreasonably, the onus shall be on the aggrieved party to prove that the Lessor or Lessee has withheld its consent or approval unreasonably.

## 22. OCCUPATIONAL HEALTH AND SAFETY ACT OF 1983

22.1. The Lessee confirms that with effect from the Commencement Date it will have acquired full control in respect of the use of the Leased Premises for purpose of The Occupational Health and Safety Act, Act No 85 of 1993 (“**Occupational Health and Safety Act**”), and any of the regulations promulgated thereunder. The Lessee hereby indemnifies the Lessor against any claims arising from the Lessee’s non-compliance with the provisions of the Occupational Health and Safety Act.

22.2. The Lessee shall be obliged at all times during this Agreement to comply with the provisions of the Occupational Health and Safety Act at its cost and in this regard, undertakes forthwith on demand from the Lessor to do all things necessary to ensure compliance with the provisions of the Occupational Health and Safety Act inclusive of, *inter alia*, to the electrical compliance certificate.

## 23. HOLDING OVER

- 23.1. Should the Lessor cancel this Agreement and the Lessee disputes the Lessor's right to do so and continues to occupy the Leased Premises pending the determination of that dispute, then:
- 23.1.1. the Lessee shall continue to pay all amounts which would be due by the Lessee in terms of this Agreement on the due dates thereof;
  - 23.1.2. the Lessor shall be entitled to recover and accept those payments;
  - 23.1.3. the recovery or acceptance by the Lessor of such payments shall be without prejudice to and shall not in any manner whatsoever affect the Lessor's claim to cancellation of this Agreement or for damages of any other nature whatsoever.
- 23.2. Should the dispute between the Lessor and the Lessee be determined in the Lessor's favour, then the payments made to the Lessor in terms of the above shall be regarded as amounts paid by the Lessee on account of the loss and/or damages sustained by the Lessor as a result of the holding over by the Lessee of the Leased Premises.

## 24. **DESTRUCTION**

- 24.1 In the event of a fire or any other disaster occurring and the Leased Premises being destroyed or so damaged as to render it wholly or partly unsuitable for the continuation of the business conducted thereat, the Lessee shall have the right in its sole discretion either to rebuild or repair the destroyed or damaged portion of the building and keep the lease in force, or to cancel the lease by written notice addressed to the Lessor.

## 25. **FAIR MARKET VALUE**

- 25.1. For the purposes of determining the Fair Market Value in relation to the Leased Premises, the Fair Market Value shall be agreed or, failing agreement, determined in accordance with the provisions of this clause 255.
- 25.2. The Fair Market Value shall in the first instance be the value as agreed between the Parties. If the Parties reach agreement, then their agreement will be reduced to writing, which will then constitute the Fair Market Value of the Leased Premises.
- 25.3. If the amount of the Fair Market Value is not agreed between the Parties within 10 (ten) Business Days, then:
- 25.3.1. each Party shall appoint an expert who shall be suitably qualified with knowledge of the valuation of properties and businesses similar to the Leased Premises and the business conducted thereon to determine the Fair Market Value, on the basis set out in this clause 25;
- 25.3.2. the Parties shall use their respective reasonable endeavours to procure that each expert appointed by it in terms of clause 25.3.1 determines the amount of the Fair Market Value, and delivers to the other expert and to the Parties written notice of the determination, within a period of 30 (thirty) days commencing from the expiry of the aforementioned 10 (ten) Business Day period referred to in 25.3.
- 25.4. Within 5 (five) days of receipt of the written notice referred to in clause 25.3.2, the Parties shall compare each expert's determination and if the amount of Fair Market Value, as set out in each expert's determination, differs by more than 3% (three per cent), then the amount of the Fair Market Value will be determined and certified by a panel of 3 (three) Independent Experts (**the "Panel"**) acting *mutatis mutandis* in accordance with the provisions of clause 25.4 and the remaining provision of this clause 255.



26. **RIGHTS AND DUTIES OF THE LESSEE**

26.1. Notwithstanding anything to the contrary contained in this Agreement, the Parties record that the rights of the Lessee shall include, *inter alia*:

26.1.1 the right to use the Leased Premises as a recreational place and may accommodate the Lessee's employees, contractors or agents including, the equipment and materials;

26.1.2 the right to install, operate and maintain such security systems as the Lessee in its sole and absolute discretion shall deem necessary for the purposes of protecting the Lessee's Property, the Project Equipment, the Nature Reserve Facility; and the safety of all persons (including the general public) traversing over the Property;

26.1.3 unrestricted access to any portion of the Property for the purposes of, *inter alia*, –

26.1.3.1. carrying out the Works,

26.1.3.2. operating, maintaining, refurbishing, upgrading, repairing, renewing, removing and replacing of any Project Equipment; and;

26.1.3.3. doing all such things as the Lessee, in its sole and absolute discretion, may deem necessary and desirable for the purposes of conducting the Holiday Resort and Spa.

26.2. The Lessee shall –

- 26.1.1. conduct the Holiday Resort and Spa activities for which the Property is let in a diligent manner and in accordance with the approvals granted by the relevant authorities;
- 26.1.2. not infringe any law, servitude, licence or permit relating to the use of water;
- 26.1.3. not contravene any of the conditions of title of the property or any of the laws, rules or regulations affecting occupiers of the Property;
- 26.1.4. not cause or commit any public nuisance;
- 26.1.5. refrain from interfering with the electrical, plumbing or gas installations or systems serving any of the Improvements, except as may be necessary to enable the Lessee to carry out its obligations of maintenance and repair in terms of this lease;

## **27. BREACH OF THIS AGREEMENT**

27.1. In the event of any of the Parties ("Defaulting Party") committing a material breach of any of the terms of this Agreement and failing to remedy such breach within the relevant notice period referred to in clause 30 below, after receipt of a written notice from the other Party ("Aggrieved Party") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement

or, to cancel this Agreement forthwith and without further notice, and in either case to claim and recover damages from the Defaulting Party.

27.2. The Parties agree that the cancellation of this Agreement in the event of non-material breach would be inappropriate and it is agreed that in the event of a non-material breach the only remedies available to the Aggrieved Party will be an order for specific performance and/or damages.

## 28. NOTICE OF BREACH

Due to the nature of the Project and the risks involved in carrying out the Works and/or conducting the health care and medical activities, the Parties agree that for the purposes of calculating the notice period referred to in clause 30, below, the parties agree as follows —

### DEFAULT BY LESSEE

28.1. Should the Lessee:

28.1.1. contravene or permit the contravention of any one or more of the conditions of this Lease or fail in the observation of any one or more of the terms and conditions of this lease (each of which provisions, terms and conditions shall be deemed material to this Lease) and fail to remedy the default or breach within 14(fourteen) days after dispatch of notice in writing (at the expense of the Lessee) sent by registered post to the Lessee requiring it to do so, subject however to the provisions contained in clause 30 ;

- 28.1.2. be placed in provisional or final liquidation, under judicial management or Administration or if judgment be taken against the Lessee by default, the Lessor shall subject to the provisions contained herein above, be entitled notwithstanding any prior waiver, extension, or condonation and without prejudice to any other rights the Lessor may have hereunder, immediately and without prejudice to any other rights and remedies, to cancel this Lease and to obtain repossession of the premises and for that purpose to take whatever action may be necessary for the immediate ejectment of the Lessee from the premises without prejudice furthermore to the Lessor's rights to claim rent already accrued and such further damages as the Lessor may sustain by reason of the Lessee's breach or default or cancellation of the Lease.
- 28.2. Alternatively, to the provisions of the preceding sub-clause hereof, the Lessor shall in any of the said events in his sole discretion be entitled to cancel the lease and permit the Lessee to remain upon the premises on a monthly tenancy terminable by one (1) month's written notice to be given by either party but subject in all other respects to all the terms and conditions of this contract.
- 28.3. Should the Lessor instruct its attorneys to make demand or institute legal proceedings against the Lessee as a result of non-payment of any rental or other breach by the Lessee of any of the terms of this Lease, the Lessee shall be responsible for and shall upon demand pay all legal costs and disbursements, including collection charges, on the scale as between attorney and client.
- 28.4. Should the Lessor cancel this Lease and the Lessee disputes the Lessor's right to cancel same and remain in occupation of the premises, the Lessee shall be obliged pending the determination of such dispute to continue to

pay an amount equivalent to the monthly rental on due date and the Lessor shall be entitled to accept and to recover such payments either before or after legal proceedings have been instituted. The acceptance of such amounts shall be without prejudice to and shall not in any way affect the Lessor's claim for cancellation then in dispute.

28.5. Should such dispute be decided in favour of the Lessor, the payments so made shall be deemed to be payments by the Lessee on account of the damages suffered by the Lessor by reason of the cancellation of the Lease and/or the unlawful holding over by the Lessee.

## 29. **NOTICES AND DOMICILIA**

29.1. For the purpose of delivery or any notice and service of any process, pleadings or documents in any action or proceedings arising out of this agreement,

29.1.1. the Lessor chooses *domicilium citandi et executandi* at:

**Physical Address:**            **Corner Church and Greyling Street  
Burgersdorp  
9744**

**Postal Address:**            **P.O. Box 13  
Burgersdorp  
9744**

**Tel No:**                        **051 653 1777**

29.1.2. the Lessee chooses *domicilium citandi et executandi* at:

**Physical Address:**            **28B Duncan Street  
Maletswai  
9750**

**Postal Address:**            **28B Duncan Street  
Maletswai**

9750

Email: [info@limakatso.co.za](mailto:info@limakatso.co.za)

- 29.2. Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party's chosen address or e mail address, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party's *Domicilium*.
- 29.3. Any Party may by written notice to the other Parties, change its chosen address or e-mail address to another address or e-mail address, provided that:
- 29.3.1. the change shall become effective on the 10<sup>th</sup> (tenth) Business Day after the receipt or deemed receipt of the notice by the addressee in accordance with the provisions of clause 29.4, and
- 29.3.2. any change in a Party's *Domicilium* shall only be to an address in South Africa, which is not a post office box or a poste restante.
- 29.4. Any notice to a Party contained in a correctly addressed envelope; and
- 29.4.1. sent by prepaid registered post to it at its chosen address in clause **Error! Reference source not found.** or

29.4.2. delivered by hand to a responsible person during ordinary business hours at its chosen address in clause **Error! Reference source not found.**

shall be deemed to have been received in the case of clause 29.4.1 on the fifth Business Day after posting (unless the contrary is proved) and, in the case of clause 29.4.2 on the day of delivery.

29.5. Any notice by e-mail to a Party at its e-mail address shall be deemed, unless the contrary is proved, to have been received on the first Business Day after the date of transmission.

29.6. Notwithstanding anything to the contrary contained in this clause 29, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address or e-mail address as set out in clause **Error! Reference source not found..**

### 30. **BREACH**

Should either Party (**Defaulting Party**) breach any of the provisions of this Agreement, then the other Party (**Aggrieved Party**) may give the Defaulting Party 14 (fourteen) days' written notice or such longer period of time as the Aggrieved Party may specify in the notice, to remedy the breach. If the Defaulting Party fails to comply with the notice, the Aggrieved Party may exercise any rights that the Aggrieved Party may have under this Agreement or in law.

### 31. **APPLICABLE LAW**

This Agreement is governed by South African law.

**32. JURISDICTION**

The Parties unconditionally consent and submit to the exclusive jurisdiction of High Court of South Africa, Eastern Cape Division, Makhanda in regard to all matters arising from this Agreement.

**33. GENERAL**

33.1. This Agreement is the whole agreement between the Parties in regard to its subject matter.

33.2. No addition to or variation or consensual cancellation of this Agreement, including this clause, has effect unless in writing and signed by the Parties.

33.3. No indulgence by a Party to another Party, or failure to strictly enforce the terms of this Agreement, is to be construed as a waiver or be capable of founding an estoppel.

33.4. The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of this Agreement.

33.5. Any illegal or unenforceable provision of this Agreement may be severed and the remaining provisions of this Agreement continue in force.



33.6. The Parties acknowledge that they have had the opportunity to obtain independent legal advice before entering into this Agreement and in the absence of having done so, have waived their right to do so.

**34. COSTS**

34.1. The costs of and incidental to the drawing of this agreement as between attorney and client, together with stamp duty payable thereon and any other charges incurred in connection herewith shall be borne by the Lessee.

34.2. If in any legal proceedings relating to the enforcement by either Party of its rights in terms of this Agreement or if a court awards costs to any party, such costs shall be determined and recoverable on the scale as between an attorney and own client and shall include collection charges, the costs incurred by such party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any judgment awarded in favour of such party in relation to its rights in terms of or arising out of this Agreement.

**35. COUNTERPARTS**

35.1. This Agreement may be executed in counterparts, each of which will be an original and which together constitute the same agreement.

**36. UNCONTROLLABLE EVENT**

36.1. If as a result of any Uncontrollable Event the supply of electricity, water or any other service to the Leased premises or the Aliwal Spa Holiday Resort or the Property is interrupted or lost, permanently or temporarily the Lessee shall be obliged to take such reasonable steps as may be necessary to

restore or partially restore the supply, or obtain an alternative supply or partial supply of the relevant service including (without limitation) by acquiring and installing an electric generator provided that the Lessee or its officers, employees, agents, concessionaires, suppliers, contractors or customers shall have no claim of any nature against the Lessor for any loss of or damage to property (of whatever nature) or death or injury, which any of them may directly or indirectly suffer by reason of, or arising partially or completely from any Uncontrollable Event.

36.2. The Lessee or its officers, employees, agents, concessionaires, suppliers, contractors or customers will not have any claim of any nature whatsoever against the Lessor for:

36.2.1. any loss of or damage to property (including loss of the right to occupy the Leased Premises) or death or injury, which any of them may directly or indirectly suffer by reason of, or arising partially or completely from any Uncontrollable Event, and whether or not such loss, damage, death or injury arises in, upon, at, in respect of or around the Leased Premises, the Aliwal Spa Holiday Resort or the Property; or

36.2.2. revision of Rental for total or partial loss of the right to occupy the Leased Premises, nor shall the Lessee be entitled to terminate or cancel the Agreement or withhold or defer payment of Rental or any other amount due in terms of the Agreement by reason of or arising partially or completely from any Uncontrollable Event or any other cause either wholly or partly beyond the Lessor's control except as provided for in clause 8.

37. To the extent permissible by law, no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

This done and signed at  
on this    day of December 2024.

in the presence of the undersigned witnesses

As witnesses:

1. ....

2.....

.....

**Name: Khaya Gashi**

Designation: Municipal Manager

For and on behalf of: Walter Sisulu Local

Municipality ,Who warrants that he is duly

authorized to do so by way of a resolution

passed by the municipal council (*the Lessor*)

This done and signed at \_\_\_\_\_ in the presence of the undersigned witnesses  
on this \_\_\_\_ day of December 2024.

As witnesses:

1. ....

2.....

.....

**Name: Mamello Likobo**

Designation: Director of Limakatso Boutique Hotel

For and on behalf of: Limakatso Tsa Maletswai

Consortium ,Who warrants that he is duly authorized

to do so by way of a resolution passed by the

Consortium(*the Lessee*)

## **ANNEXURE : A- DIAGRAM**

**ANNEXURE B**

**TO BE PROVIDED BY COUNCIL**

## ANNEXURE C

1. The Operating Costs shall include (but not be limited to) all costs associated with:
  - 1.1 keeping the inside and outside of the Leased Premises, (including the interior and exterior of all windows and doors) and all its contents clean and tidy;
  - 1.2 the maintenance of all air-conditioners on the Leased Premises and/or the air-conditioning plant serving the Leased Premises and all standby generators supplying power to the Leased Premises from time to time;
  - 1.3 maintaining the inside of the Leased Premises in a good functional order and keeping them neat, clean and hygienic and repairing all damages done to the Leased Premises, including the doors and windows, doorframes, handles, shop-fronts, window frames and window handles, fair wear and tear excluded;
  - 1.4 maintaining and repairing any plate or other glass, both internal and external and window panels contained in the Leased Premises and replacing any such glass as may be damaged, however and by whomever such damage shall be caused but specifically excluding any repairs and maintenance of a structural nature envisaged in clause 15.1.1 of the Agreement;
  - 1.5 ensuring that access to the Leased Premises is secure at all times;
  - 1.6 maintaining, and where necessary, replacing any fire extinguishing equipment, fire detection alarm system, power supply and electrical systems, including, but not limited to electrical outlets, plugs and distribution boards, installed in the Leased Premises;
  - 1.7 maintaining the drainage, plumbing installations, including but not limited to, the geysers, sanitary fittings and works in the Leased Premises and replacing any damaged or faulty installations;
  - 1.8 maintaining all mechanical equipment, including but not limited to, the electrical installation and fire equipment in good working order and condition.

- 1.9 replacing at its own cost all light fittings, fluorescent tubes, stators, globes and incandescent lamps used in the Leased Premises;
- 1.10 replacing at its own cost all fittings and fixtures installed in the Leased Premises as at the Commencement Date and installing any further fixtures and fittings required by the Lessee during the duration of this Agreement;
- 1.11 being responsible for:
  - 1.11.1 the safety, safe use and maintenance of the electrical installations in the Leased Premises;
  - 1.11.2 the safety of the conductors connecting the electrical installations to the point of supply;
- 1.12 in the upkeep of the Premises, being responsible for painting the Leased Premises with SABS approved paint as and when it becomes necessary;
- 1.13 being responsible for any security, landscaping, cleaning, gardening costs including the services used or supplied in the running of any generators and any other equipment;
- 1.14 being responsible for the maintenance, of and for such repairs and replacements becoming necessary from time to time, in or to the Aliwal Spa Holiday Resort and all parts thereof, other than those which are the responsibility of the local authority, and the Lessee's obligations in this respect shall include the maintenance and repair of the building of the Holiday Resort; and
- 1.15 being responsible for the appointment of and payment to an external service provider to remove all waste from the Lease Premises at such standards and in accordance with such policies as are acceptable to the Department of Trade and Industry and the Department of Health.