

LEASE AGREEMENT

Entered into by and between
NC Millenium Property Developers and Suppliers
Herein represented by Tyron Erol Ruiters
Company Registration Number 2015/157078/07

Of Roylglen Office Block C c/o Welgenvonden & Memorial Road

(Hereinafter referred to as the "**LESSOR**")

AND

The Northern Cape Provincial Government

Herein represented by **Dr. Johny Mac Kay**

In his capacity as **the Accounting Officer of the Department of Roads and Public Works**

Of 9 – 11 Stokroos Street, Squarehill Park, Kimberley, 8300

(Hereinafter referred to as the "**LESSEE**")

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1. PARTIES

The parties to this Agreement shall be:

- 1.1 **NC Millenium Property Developers and Suppliers** herein represented by Mr **Tyron Errol Ruiters in his capacity as a Director of the company** (hereinafter referred to as the "Lessor").

and

- 1.2 **The Northern Cape Provincial Government** herein represented by **Dr. Johny Mac Kay in his capacity as the Accounting Officer of the Department of Roads and Public Works** (hereinafter referred to as a "Lessee"); on behalf of the **Office of the Premier.**

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this agreement, unless the context indicates otherwise, the following words have the meanings assigned to them hereunder:

"Commencement date" - the date on which this lease comes into effect.

"commencement rental" - the monthly rental payable in respect of the first year of the lease or, in the event of the first fixed period of the lease being less than one year, the rental determined for that period, the amount of which is stipulated in the Agreement;

"Custodian" - the entity responsible for all negotiations and matters incidental to the acquisition and maintenance of accommodation on behalf of provincial government departments as further defined in section one, read with section four of the Government Immovable Asset Management Act, 19 of 2007;

"escalation rate" - the percentage or other index, agreed to by the parties, which adjusts the rental on every adjustment date;

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"expenses" - those disbursements in respect of the premises which are occasioned by the ownership or the operation thereof, e.g. assessment rates, municipal levies, air-conditioning and lift maintenance, insurance premiums, etc.;

“fixtures” shall refer to movable or immovable fittings installed by the Lessee and required for the Lessee’s purposes, such as computer cables, telephone systems and fire detection equipment.

"Lessee" - the Northern Cape Provincial Government, duly represented by the Accounting Officer of the Department of Roads and Public Works or his delegate.

"Lessor" - the owner of the property or premises or the owner's duly authorized representative.

"maintenance" - everything which is required to be done in order to enable the Lessee to return the premises to the Lessor on the termination date in the condition they were in at the commencement date, fair wear and tear excepted. This includes the cleaning of the premises, general daily upkeep such as the replacement of electric bulbs and washers for taps, the repair of locks, etc., i.e. everything short of "repairs" as defined hereunder;

"option period" - the period for which this lease can be extended at the option of the Lessee.

"premises" - the building and/or the structure and/or the land, or portions thereof, which form the subject of this lease;

"property shall refer to: 69 Memorial Road DSC Office Block
Erf 41179, measuring
a total of 8547m²
@ R162 per m² parking
110 (R220 per bay), covered 146 (R150 per bay)
Open parking bays excluding Vat

marking
bay)

"repairs" - everything which is required to be done in order to achieve the same goal as that envisaged in the definition of "maintenance", but which requires more labour and more expense than maintenance, such as the replacement of cables, taps, locks, floor tiles and the like. The parties are agreed that normal wear and tear may require repairs with the passing of time.

"termination date" - the date agreed to by the parties on which the lease terminates;

"User" - the entity or provincial government department which will take physical occupation of the **property** and as defined in terms of section 1 of the Government Immovable Asset Management Act, 19 of 2007

The clause headings of this agreement have been inserted for reference purposes only and shall not be taken into account in its interpretation. Unless the context indicates otherwise, words importing the singular shall include the plural, words importing one gender shall include the other genders, and words importing persons shall include legal persons.

If a provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive provision in the body of the agreement, notwithstanding that it is in the definitions clause.

3. THE LEASE

The Lessor hereby lets the premises to the Lessee who hires the premises on the terms and conditions of this agreement, incorporating the Schedules.

4. DURATION

4.1 This lease shall commence on the **01 July 2023**, endure for a period of **9 years** and **11 months** expire on the **31 May 2034**.

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- 4.2 Should the parties intend to proceed with lease over the premises after the expiry of this lease agreement, such party willing to proceed with the lease shall deliver to the other party, six (6) months before the expiry of this lease, a written notice to that effect. The parties shall then engage in negotiations and enter into a new lease.
- 4.2.1 Should either parties intend to voluntarily terminate the lease agreement before the expiry date such party shall serve three **(3)** months notice to the other party, which will not be less than Ninety **(90)** days.
- 4.3 The parties shall remain firmly bound to let and hire the premises and to perform all their respective obligations for the full duration of this lease. No party shall cede or assign its rights and obligations under this agreement without written consent by the other party.
- 4.4 Should the Lessor consider and decide to sell the premises, the Lessee will be notified and given first option to buy the premises before the Lessor advertises the sale publicly. The Lessee will have fourteen (14) days to consider the option to buy from the date of notice by the Lessor. Should the Lessee not exercise this option within the fourteen (14) days the Lessor will proceed to advertise to the general public or other interested buyers.

5. THE RENTAL

- 5.1 From the commencement date until **30 June 2024** the monthly rental of the premises shall be a sum of **One Million Four Hundred Thirty Thousand Seven Hundred and Fourteen Rand (R 1 430 714.00)** ("**commencement rental**") **excluding Vat**, which is subject to renegotiation after Four years to reduce the cost per square meter .
- 5.2 The rental payable in respect of this agreement will escalate by **6.5%** per annum ("**escalation rate**"). The rental amount shall then be payable as follows:

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Office Accommodation

01 July 2023 : **R 1 258 740.00**

Year 1 : **R 1 384 614.00** per month from 01 August 2023 - 30 June 2024

Year 2 : **R 1 474 613.91** per month from 01 July 2024 - 30 June 2025

Year 3 : **R 1 570 463.81** per month from 01 July 2025 - 30 June 2026

Year 4 : **R 1 672 543.96** per month from 01 July 2026 - 30 June 2027

Year 5 : **R 1 781 259.32** per month from 01 July 2027 - 30 June 2028

Year 6 : **R 1 897 041.18** per month from 01 July 2028 - 30 June 2029

Year 7 : **R 2 020 348.85** per month from 01 July 2029 - 30 June 2030

Year 8 : **R 2 151 671.53** per month from 01 July 2030 - 30 June 2031

Year 9 : **R 2 291 530.18** per month from 01 July 2032 - 30 June 2033

11 Months : **R 2 440 479.64** per month from 01 July 2033 - 31 May 2034

Parking

Year 1 : **R 46 100.00** per month from 01 July 2023 - 30 June 2024

Year 2 : **R 49 096.50** per month from 01 July 2024 - 30 June 2025

Year 3 : **R 52 287.77** per month from 01 July 2025 - 30 June 2026

Year 4 : **R 55 686.47** per month from 01 July 2026 - 30 June 2027

Year 5 : **R 59 306.09** per month from 01 July 2027 - 30 June 2028

Year 6 : **R 63 160.99** per month from 01 July 2028 - 30 June 2029

Year 7 : **R 67 266.45** per month from 01 July 2029 - 30 June 2030

Year 8 : **R 71 638.77** per month from 01 July 2030 - 30 June 2031

Year 9 : **R 76 295.30** per month from 01 July 2031 - 30 June 2032

11 Months : **R 81 254.49** per month from 01 July 2033 - 31 May 2034

5.2.1 The lessee will also be responsible for the following:

5.2.1.1 The cost of electricity and gas, if any, consumed on the leased premises, either on a metered basis or on a pro- rata share of the area occupied

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5.2.1.2 The cost of electricity consumed in the common areas of the property; on a pro rata share basis of area occupied from time to time, including the costs of the diesel consumed at any time during the load shedding.

5.2.1.3 The cost of water consumed on the premises, either on a metered basis or pro-rata share of the area occupied

5.2.1.4 Costs of water used in the toilet facilities and gardens on the property, on a pro-rata share basis.

5.2.1.5 Refuse removal charges, sanitary fees and domestic and industrial effluent fees, levied from time to time in respect of the leased premises, on a pro-rata share basis of the area occupied from time to time

5.3 The rental shall be payable monthly in advance on or before the seventh day of each month at the address of the Lessor or at such other address in South Africa as may be nominated in writing by the Lessor.

5.4 The parties agree that all rentals payable in terms of this agreement shall include value-added tax where such tax is payable and only if the Lessor is registered with South African Revenue Services as a VAT Vendor. In that event, the VAT Registration Number must be affixed to the description of the Lessor in page 1 of this Agreement. The Lessor shall specify such tax separately from the basic rental.

5.5 The rental shall be payable from the commencement date monthly in advance on or before the first day of each month into the lessor's bank account as stated below.

Name of Bank	:	Absa Bank
Account holder	:	NC Millenium Property Developers and Suppliers
Account number	:	4107709127
Branch code	:	632005

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6. DEPOSIT

- 6.1 The Lessee shall pay to the Lessor a deposit of **R0.00** which amount may be applied by the Lessor in whole or in part, when fulfilling any payment that the Lessee is required to make to the Lessor at any time during this lease and/or after the termination hereof.
- 6.2 Whenever during the lease period or extension period, whatever the case is, the deposit amount is so applied in whole or in part, the Lessee shall, on demand reinstate the deposit to its original amount.
- 6.3 Upon termination of this lease and as soon as all the obligations of the Lessee have been discharged, the Lessor shall refund to the Lessee so much of the deposit amount as has not been applied in terms of clause 6.1 above.

7. USE OF PREMISES

The premises shall be used by the Lessee solely for office accommodation and for no other purpose, except with the written consent of the Lessor, which consent shall not be withheld unreasonably.

- 7.2 The Lessor shall be obliged to obtain such consents and authorisations (excluding trade and other licenses) as may be required by competent authorities or title conditions to enable the Lessee to use the premises for the purpose referred to in clause 7.1 above. The Lessee shall, prior to the conclusion of this lease, be informed of such restrictions (if any).

8. RATES AND TAXES

- 8.1 The Lessor shall be solely responsible for the payment of the property rates and taxes levied by any competent authority in respect of the premises during the

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currency of this lease. The lessee shall from time to time pay to the landlord an annual increase of the rates and taxes.

9. DEFECTS AND MAINTENANCE

- 9.1 The Lessor shall at the Lessor's own expense maintain the structure of the premises, including but not limited to the roof, walls, floors, supporting roof columns, ceilings (excluding all interior finishes on floors, walls and ceilings).
- 9.2 It is specifically agreed that the Lessor shall at the Lessor's own expense, maintain the lifts (if any), escalators (if any), air-conditioners, hot water geysers and drains & sewer connections on the premises. The Lessee shall notify the Lessor in writing of any maintenance issues within 7 (seven) days. The Lessor shall within fourteen (14) days after receipt of such notice repair the defect(s).
- 9.3 Subject to clause 9.1 above, the Lessee shall during the currency of this lease maintain the interior and exterior of the premises in good order and in a neat, clean and undamaged condition, fair wear and tear excepted. The Lessee shall also keep in good working order all electrical, plumbing and other fixtures and fittings in the premises. Unless the lessee surrenders the responsibility to the landlord which will come at a separate cost.
- 9.4 The Lessee shall immediately repair and replace any cracked or broken window panes, any lost or damaged keys and all electrical light bulbs, fluorescent lamps, wall plugs, switches, tap washers and seals in the premises as soon as such defect arises, notwithstanding that such defect may have arisen as a result of fair wear and tear.
- 9.5 Should the Lessee, upon occupation of the premises, discover any defects on the premises, the Lessee shall notify the Lessor in writing of such defects within 30 (thirty) days of occupation. The Lessor shall within fourteen (14) days after receipt of such notice repair the defect(s).

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- 9.6 If the Lessee fails to notify the Lessor of any defects as aforesaid, the premises shall be deemed to have been delivered to the Lessee without defects.
- 9.7 It is specifically recorded that the premises are comprehensively insured by the Lessor against any damage or destruction by fire, storm or other risks normally covered under the standard policies issued by various Insurance Companies in respect of similar commercial premises.
- 9.8 In the event of any structural damage or defect in the premises occurring during the currency of the lease, the Lessee shall immediately notify the Lessor in writing so as to enable the Lessor to timeously lodge a claim with the Insurance Company under the policy mentioned above or to repair and make good such damage or defect.
- 9.9 Should the Lessor fail to comply with his obligations or fail to repair the defects of which notice was given in terms of clause 9.5, the Lessee shall notify the Lessor in writing of such failure and then the Lessee shall be entitled to rectify those matters at the Lessee's own expense and to recover the costs thus incurred by way of set-off against the rental.
- 9.10 In the event of the premises being a portion of a building and it consequently being necessary to determine the Lessee's pro rata share in respect of maintenance or the consumption of necessary services, the pro rata share of the Lessee, for the purposes of this agreement, shall be determined by calculating the area of the premises as a fraction of the total area of the building. For the purposes of such calculation areas shall be determined from time to time by the Sapo-a-method for the calculation of rentable areas. Where the pro rata share or portion thereof is payable to the Lessor, the Lessee shall pay on receipt of a properly substantiated account.
- 9.11 Should the Lessor fail to pay expenses or to undertake repairs the Lessee may remind the Lessor in writing, and should the Lessor still be in default thirty (30) days after receipt of such reminder, the Lessee shall be entitled to demand specific performance or to pay such expenses or to undertake such repairs and to recover



the amounts thus disbursed from the Lessor by way of set-off against future rental.
A certificate by the Lessee of such expenses shall be prima facie proof thereof.

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10. LESSEE'S FIXTURES AND FITTINGS

10.1 The Lessee shall be entitled, at his expense and with the written consent of the Lessor (which consent shall not be unreasonably withheld), to install fixtures; which shall remain the property of the Lessee on the premises provided that, at the termination of this lease -

10.1.1 Fixtures may be removed by the Lessee on condition that the premises are restored before the termination date to the condition in which they were before the installation of the fixtures, fair wear and tear excepted;

10.1.2 Should the Lessee fail to remove all fixtures, then the Lessee shall not be entitled to compensation for such fixtures that have not been removed;

10.2 Upon termination of this lease, the Lessee is obliged to restore the premises to the Lessor in the same good condition as the premises were at the commencement of the lease, fair wear and tear excepted.

11. STRUCTURAL ALTERATIONS

11.1 The Lessee shall not effect any structural alterations or improvements of whatsoever nature to the premises without the prior written consent of the Lessor.

11.2 Any improvements to the premises by the Lessee shall (in the absence of written agreement to the contrary) accrue to the Lessor without any compensation whatsoever to the Lessee and without prejudice to the Lessor's right to have any unauthorised alterations or improvements removed and the premises restored in terms of this agreement at the Lessee's sole expense.

11.3 In the event that written consent of the Lessor is granted to the Lessee to effect structural alterations, the alterations and improvements to the premises shall accrue to the Lessor and the Lessee shall be entitled to compensation thereof from the Lessor upon giving the Lessor written notice thereof within thirty (30) days of completion of the alterations. The written notice referred to in this clause must be

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accompanied by proper accounts and/or invoices proving the amount expended by the Lessee on such alterations.

- 11.4 The Lessor shall effect all tenant customization as requested by the lessee for the cost of the lessee and the cost of such customization shall be for the account of the lessee over a time-frame agreed to by the parties.

12. LIMITATION OF THE LIABILITY OF THE LESSOR

- 12.1 The Lessor shall not be liable for any damage which the Lessee may suffer as a consequence of actions by enemies of the State or in consequence of the interruption of any facility or service supplied to the premises by third parties, unless such damage is caused by the intent or negligence of the Lessor, his employees or agents.
- 12.2 Notwithstanding the provisions of 12.1, the Lessee shall be entitled to a reduction in rental for any period (normal disconnection for maintenance accepted) during which the central air-conditioning system or the lifts, if any, are out of order.
- 12.3 The Lessor shall not be liable for any accident, injury or damage suffered by the Lessee, his employees, agents or visitors, in or near the premises, irrespective of the cause thereof, unless caused by the intent or negligence of the Lessor, his employees or agents.

13. FIRE FIGHTING

- 13.1 The Lessor shall be obliged to install fire-extinguishing equipment on the premises complying with the National Building Regulations before the Lessee takes occupation of the premises, while the Lessor will be responsible to maintain it.
- 13.2 The Lessee shall at all times take all reasonable precautions to prevent the outbreak of fire in the premises.

14. DAMAGE TO OR DESTRUCTION OF THE PREMISES

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14.1 In the event of the premises being destroyed as a result of circumstances beyond the control of the Lessor and thus rendering it totally unfit for occupation, this lease shall be terminated automatically on the date of such destruction.

14.2 In the event of the premises being damaged or partially destroyed as a result of circumstances beyond the control of the Lessor, but remaining wholly or partially suitable for the purposes it was let, either party shall be entitled to terminate this agreement by written notice, of not less than one (1) month calculated from the date of such damage or destruction, to the other party. Should the parties continue with the agreement, the Lessee shall be entitled to a reduction in rental to the extent to which the Lessee is deprived of the full usage of the premises.

15. INSPECTION

The Lessor shall be entitled at all reasonable times through the Lessor's representative to enter the premises for the purpose of inspecting same and, with reasonable notice to the Lessee, for the purpose of correcting any structural defect which may have occurred in the premises.

16. BREACH OF CONTRACT

16.1 Should either party breach any of the provisions of this lease, the aggrieved party shall deliver to the other party, a written notice demanding the defaulting party to remedy such breach within a period of thirty (30) days.

16.2 Should the defaulting party fail to remedy the breach within the thirty (30) days period, then the aggrieved party shall by means of a further written notice and without prejudice to any of the rights the aggrieved party may have in law, be entitled to either enforce specific performance of the provisions of the lease or summarily cancel the lease; and in either event, to recover damages sustained as a result of the breach.

16.3 The aforementioned notice shall indicate the date of termination.

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17. GENERAL

This Agreement constitute the entire Agreement between the parties in respect of this lease and neither party shall be bound by any undertakings, representations, warranties or promises not recorded in this Agreement.

17.2 No variation hereto shall be of any force or effect unless agreed to by both parties and reduced to writing and signed by the duly authorized representatives of both parties.

Notices pursuant to the provisions of this lease shall be given in writing. Notices by telex or telefax shall be deemed to be in writing, provided the original copies thereof are dispatched and received at the earliest possible date.

Clause headings are inserted for the sake of convenience only and shall be ignored in the interpretation of this Agreement.

17.5 It is specifically recorded that the Lessee has borne the responsibility for the drafting of this agreement and the Lessee shall not be liable for the cost of any amendments, additions or changes effected to the agreement.

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18. DOMICILIUM

The parties choose as their *domicilia citandi et executandi* and for the purposes of giving or sending any notice provided for or required in terms of this Agreement, the following addresses:

18.1 Lessor: Nc Millenium Property Developers and Suppliers
 Roylglen Office Block C
 C/o Welgenvonden & Memorial Road
 Kimberley
 8300

18.2 Lessee: 9 – 11 Stokroos Street
 Squarehill Park
 Kimberley
 8300

THUS DONE AND SIGNED AT KIMBERLEY ON THIS THE 06TH
 DAY OF JUNE 2023.



LESSOR

AS WITNESSES:

1. 

2. 



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THUS DONE AND SIGNED AT Kimberley ON THIS THE 6th
DAY OF June 2023.



DR. JOHNY MAC KAY

For and on behalf of the Northern Cape Provincial Government

AS WITNESSES:

1. _____

2. _____

  

	Schedule 1	
Address of Building		
69 Memorial Road		
DSC Office Block		
Kimberley		
	Responsibilities	
	Lessor	Lessee
Municipal Services		x
Rates and Taxes	x	
Water		x
Electricity		x
Sewerage	x	
Refuse		x
Building Maintenance	x	
General Maintenance / Normal Wear and Tear		x
Lift Maintenance	x	
Alarm System		x
Building Insurance	x	
Fire Extinguishers/ Hose	x	
Cleaning		x

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