

**CIVIL DIVISION**

**ATTORNEY-GENERAL'S OFFICE**

**NOTARIAL DEED OF LEASE**

**PROTOCOL NO.....**

**Prepared by:**

.....  
**LEGAL PRACTITIONER AND NOTARY PUBLIC**

## ARRANGEMENT OF CLAUSES

### *Clause*

1. Interpretation.
2. Conditions under which Corporate Bodies other than Statutory Bodies, religious or educational institutions or Qualifying Bodies Corporate may become Lessees.
3. Leasehold.
4. Commencement and Duration of Lease.
5. Rental.
6. Purchase by Lessee of Improvements.
7. Additional Charges.
8. Use of the Leasehold.
9. Natural resources.
10. Disease.
11. Provisions regarding Minimum development and maintenance of Improvements.
12. Fencing.
13. Cadastral Surveys.
14. Beacons and pegs.
15. Roads.
16. Nuisance.
17. Subletting, Assigning, Cession, Partnership, Etc..
18. Succession to Leasehold and Joint and Undivided shares in Leasehold.
19. Right of way.
20. Right of entry.
21. Waiver.
22. Retaking of Leasehold by Lessor for Public Purposes.
23. Termination by Lessee.
24. Cancellation of Lease by Lessor.
25. Use of Leasehold as Collateral.
26. Domicilia and notices.
27. Administration.
28. Declaration.
29. Costs.

30. Endorsement of Lease for periods of Duration of less than 99 years in certain cases.
31. Entire Agreement.
32. Expiry and Renewal of Lease

**KNOW ALL MEN TO WHOM IT MAY CONCERN**

That on this ....., before me .....

Notary public, by lawful authority duly admitted and sworn and residing and practising at Harare Zimbabwe, and in the presence of the subscribed witnesses personally came and appeared:-

.....

ID Number 25 – 021670 R 25

(In his or her capacity as Minister of Lands and Rural Resettlement and on behalf of the Government of Zimbabwe and duly authorised hereto by the Government of Zimbabwe herein after called the Lessor)

and

.....

ID Number .....

Date of Birth .....

(herein after called the Lessee)

**WHEREAS** the Government of the Republic of Zimbabwe, desiring to rectify the land ownership imbalances created by colonisation, has acquired agricultural land pursuant to

section 72(2) of the Constitution of Zimbabwe, 2013, for the purpose of settling indigenous citizens on the acquired land;

**AND WHEREAS** it is desirable that the farmers be given security of tenure by means of leases for the land allocated to them under the A2 model Scheme described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2), published in April, 2001 (as re-issued and amended from time to time);

**AND WHEREAS** it is desirable that the farmers should be able to use the aforesaid leases as collateral in securing agricultural financial assistance from lenders;

**AND WHEREAS** the Appearer on behalf of the **Lessor** wishes to enter into a lease agreement with the lessee.

**AND WHEREAS** the Lessee by his or her signature herein agrees to enter into the lease agreement with the Lessor;

**AND WHEREAS** it is desirable to register such lease agreement according to the laws of the Republic of Zimbabwe;

**NOW THEREFORE** the Parties agree as follows:-

## 1 INTERPRETATION

1.1 In this Lease:

“Acquiring Authority” means the State referred to in section 72(2), as read with section 72(4), of the Constitution of Zimbabwe;

“commencement of this Lease” means the date referred to in Clause 4;

“deeds registry” means a registry established in terms of the Deeds Registries Act for the registration of real rights in or over immovable property situated in the area served by that registry;

“Deeds Registries Act” means the Deeds Registries Act [*Chapter 20:05*] or any other law that may be substituted for that Act;

“Designated Officer” means:

- (a) a Government Land Officer; or
- (b) such other officer in the Ministry responsible for lands or agriculture or physical planning as the Lessor may designate in writing;

Provided that the Lessor may designate different officers for different purposes under this Lease;

“family trust” means any trust:

- (a) that is created by a Lessee or a natural person who is eligible to become a Lessee by virtue of holding an offer letter; and
- (b) that is embodied in a notarised Deed of Trust registered with a Deeds Registry; and
- (c) which satisfies the Lessor that its dominant purpose or effect is to enable the Leasehold to be administered by one or more trustees exclusively for the benefit of members of the family of the Lessee or eligible person;

“forest land” means any area or land which has been declared to be a demarcated forest in terms of the Forest Act [*Chapter 19:05*] or any other law that may be substituted for that Act;

“improvements” means immovable improvements related to the agricultural or pastoral use of the Leasehold or other use permitted by the Lessor, and includes permanent buildings and other attachments to the Leasehold, reclamation works on the Leasehold, and, in the case of a plantation or forest, the trees or other perennial crop growing on the plantation or forest;

“intensive agribusiness” means industrial scale production of food or cash crops or livestock;

“Leasehold” or “leased land” means the land leased in terms of this Lease and referred to in Clause 3;

“Lender” has the meaning given to it by Clause 25.1.1;

“Lessee” means:—

- (a) a natural person or natural persons signing this Lease; or
- (b) in the case where the Leasehold is to be settled upon a family trust, the trustee or trustees authorised under the terms of the Deed of Trust to sign this Lease and to exercise in a representative capacity all the rights and perform all the duties of a Lessee on behalf of the family trust; or
- (c) in the case where the Lessee is a statutory body or a religious or educational institution, a person duly authorised in writing by that statutory body or a religious or educational institution to sign this Lease and to exercise in a representative capacity all the rights and perform all the duties of a Lessee on behalf of that statutory body or religious or educational institution; or
- (d) in the case where the Lessee is a body corporate referred to in **Clause 2**, a person duly authorised by resolution of the body corporate to sign this Lease and to exercise in a representative capacity all the rights and perform all the duties of a Lessee on behalf of that body corporate;

“Lessor” means the Government of Zimbabwe as represented by the Acquiring Authority;

“Natural Region” means a Natural Region specified in section 3 of the Rural Land (Farm Sizes) Regulations, 1999, published in Statutory Instrument 419 of 1999 (as amended from time to time), or any other law that may be substituted for those regulations;

“offer letter” means a letter issued by the Lessor to the Lessee before the commencement of this Lease offering to allocate the Leasehold to the Lessee;

“plantation” means any land on which trees or any perennial crop such as coffee, tea, fruit, macadamia nuts or sugar-cane are artificially cultivated;

“prescribed rate of interest” means the maximum rate of interest prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*] or any other law that may be substituted for that Act;

“relevant local authority” means the local authority within whose jurisdiction the Leasehold is located.

- 1.2 The captions appearing at the head of the Clauses of this Lease shall not be used in interpreting, or affect, the Clauses to which they refer or any other part of this Lease.
- 1.3 Anything required to be done, approved or consented to by the Lessor under this Lease may be done, approved or consented to by a Designated Officer specifically authorised in writing for that purpose by the Lessor.
- 1.4 For the avoidance of doubt it is declared that the right to compensation upon the retaking for public purposes of the Leasehold in terms of Clause 22, or upon termination or cancellation of this Lease in terms of Clause 23 or 24, is held also by any person other than the Lessee who has any interest or right in the Leasehold, including in particular a Lender.

## **2 CONDITIONS UNDER WHICH CORPORATE BODIES OTHER THAN STATUTORY BODIES, RELIGIOUS OR EDUCATIONAL INSTITUTIONS OR QUALIFYING BODIES CORPORATE MAY BECOME LESSEES**

- 2.1 A body corporate other than a statutory body, or (subject to subclause 2.6) a religious or educational institution, may be a Lessee of one or more Leaseholds if—
  - (a) before the commencement of the Lease or Leases in question —
    - (i) it was a corporate body of any description referred to in Subclause 2.2, and will continue to be so after the commencement and for the duration of the Lease or Leases; and
    - (ii) the land that is to be the subject of the Leasehold or Leaseholds consists predominantly (that is, to the extent of not less than 50 % of the arable land) of plantation or forest land or land subject to intensive agribusiness, and will continue to be predominantly



plantation or forest land after the commencement and for the duration of the Lease or Leases; and

(iii) it held the land that is to be the subject of the Leasehold or Leaseholds;

or

(b) on the commencement of the Lease in question —

(i) it is a corporate body of any description referred to in Subclause 2.2, and will continue to be so after the commencement and for the duration of the Lease or Leases;

(ii) the land that is to be the subject of the Leasehold—

A. consists predominantly (that is, to the extent of not less than 50 % of the arable land) of plantation or forest land or land subject to intensive agribusiness, and will continue to be predominantly plantation or forest land or land subject to intensive agribusiness after the commencement and for the duration of the Lease or Leases; or

B. will, in accordance with a development plan submitted in terms of Clause 11.1 consist predominantly (that is, to the extent of not less than 50% of the arable or exploitable land) of plantation or forest land or land subject to intensive agribusiness, and will continue to be predominantly plantation or forest land or land subject to intensive agribusiness after the commencement and for the duration of the Lease or Leases.

2.2 No body corporate referred to in Subclause 2.1 may become a Lessee unless it is—

(a) a public company registered or incorporated in Zimbabwe whose shares are traded in a Zimbabwean stock exchange; or

(b) a private company incorporated in Zimbabwe in which—

- (i) the controlling interest is held by individuals who are qualifying indigenous Zimbabwean as defined in clause 25.1.1; and
- (ii) no shareholder who holds—
  - A. an offer letter or a lease in his or her own right; and
  - B. a controlling interest in the private company

holds also a controlling interest in another private company that is or may become a Lessee;

or

- (c) a company licensed under section 26 of the Companies Act [*Chapter 4:03*] (or any other law that may be substituted for that Act).

2.3 Subject to Clause 2.4 (which lifts all restrictions on the holding of forest land by private or licensed companies), a private or licensed company which qualifies to be a Lessee in terms of Subclause 2.2(b) and (c) may not, in each Natural Region, be a Lessee of one or more Leaseholds if the size of the Leasehold or of the Leaseholds taken together exceeds the maximum size of a farm permitted for that Natural Region under the Rural Land (Farm Sizes) Regulations, 1999, published in Statutory Instrument 419 of 1999 (as amended from time to time), or any other law that may be substituted for those regulations:

Provided that:

- (a) this Clause does not apply to a private or licensed company which, before the commencement of the Lease or Leases in question, held land in any Natural Region that exceeds the maximum size of a farm permitted for that Natural Region under the aforementioned regulations, so long as that land is predominantly plantation land and is to be the subject of a Leasehold or Leaseholds; and
- (b) a company referred to in proviso (a) shall not, in any Natural Region where they hold land under any Lease or Leases that exceeds the maximum size of a farm permitted for that Natural Region, obtain any

additional Lease for land in that Region after the date of commencement of the first-mentioned Lease or Leases.

- 2.4 Despite Subclause 2.3, a private or licensed company which qualifies to be a Lessee in terms of Subclause 2.2(b) and (c) may, in each Natural Region, be a Lessee of one or more Leaseholds which singly or in combination exceed the maximum size of a farm permitted for that Natural Region under the Rural Land (Farm Sizes) Regulations, 1999, published in Statutory Instrument 419 of 1999 (as amended from time to time), or any other law that may be substituted for those regulations, so long as the land subjected to the Leasehold or Leaseholds is predominantly forest land, plantation land or land subject to intensive agribusiness.
- 2.5 In this Clause, “controlling interest”, in relation to a private company, means—
- (a) the majority of the shares in the company; or
  - (b) shares representing more than half the share capital of the company; or
  - (c) shares of a value in excess of half the share capital of the company; or
  - (d) shares entitling the holder or holders thereof to a majority or preponderance of votes in the affairs of the company.
- 2.6 A religious or educational institution may be a Lessee of two or more Leaseholds if—
- (a) before the commencement of the Leases in question, the religious or educational institution held two or more pieces of land to which the Leases relate and will continue to hold such pieces of land in the capacity of a religious or educational institution for the duration of such Leases; or
  - (b) the religious or educational institution is incorporated as a company licensed under section 26 of the Companies Act [*Chapter 4:03*] (or any other law that may be substituted for that Act).

2.7 For the avoidance of doubt it is declared that a family trust is not a body corporate for the purposes of this clause.

### 3 LEASEHOLD

The Lessor has, in terms of the Agricultural Land Settlement Act [*Chapter 20:01*] (or any other law that may be substituted for the same) agreed to let and the Lessee has agreed to rent certain piece of State land, being farm..... situated in the District of ..... in ..... Province. measuring ..... hectares in extent, the boundaries and abuttals whereof have been pointed out and agreed upon by the Parties hereto, and are depicted on the copy of the survey diagram (SG.....) hereto annexed held in terms of an endorsement made by virtue of section 72(4) and (5) of the Constitution on Title Deed Number.....dated.....

### 4. COMMENCEMENT AND DURATION OF LEASE

This Lease shall commence on the date of signing thereof by the Lessee, and shall be valid for a period of 99 years.

### 5. RENTAL

- 5.1 An annual rental amounting to:..... dollars (\$.....) shall be payable in respect of the Leasehold in advance on or before the 1<sup>st</sup> January of each and every year during the currency of this Lease.
- 5.2 All payments due by the Lessee to the Lessor under this lease shall be made to any authority designated by the Lessor by notice in writing to the Lessee from time to time for that purpose.
- 5.3 The Lessee shall not withhold, defer, or make any deduction from any payment due to the Lessor, whether or not the Lessor is indebted to the Lessee or in breach of any obligation to the Lessee.
- 5.4 The Lessee shall be liable for interest on all overdue amounts payable under this Lease at the prescribed rate of interest calculated from the due date of such amounts until they are repaid in full.

- 5.5 The Lessee shall pay ..... dollars (\$0.00) as rental for the period between:—
- (a) the date of actual occupation of the Leasehold (the proof whereof shall lie with the Lessee); and
  - (b) the date of signature of this Lease.

This amount shall be paid within three months of the commencement of this Lease (or in instalments of ..... dollars \$0.00 per month).

- 5.6 The rental may be reviewed and increased annually by the Lessor by such reasonable amount as the Lessor may determine:

Provided that no annual increase in rental shall exceed a figure representing the previous year's rental as adjusted for the annual percentage increase in the cost of living for that year (as determined by the Zimbabwe National Statistics Agency (ZIMSTAT) established in terms of the Census and Statistics Act [*Chapter 10:29*] (No. 1 of 2007) or other body responsible for official statistics that may be substituted for the same).

- 5.7 Subject to Clause 5.8, no reimbursement of rentals shall be made by the Lessor upon the retaking of the Leasehold for public purposes, or the termination or cancellation of this Lease.

- 5.8 If the Leasehold is retaken for public purposes or is terminated or cancelled, the Lessee shall be entitled to reimbursement of any rentals paid in advance for any unexpired period of the Lease:

Provided that where the Lessee owes any money to—

- (a) the Lessor, the money so owed shall be offset against the rentals paid in advance; or
- (b) a Lender, the money so owed shall be offset against the rentals paid in advance and remitted by the Lessor to the Lender (and in the event that

money is owed to both the Lessor and the Lender, the offsetting shall be made for the benefit of the Lender first).

## 6. PURCHASE BY LESSEE OF IMPROVEMENTS

- 6.1 The value of the improvements on the Leasehold is hereby fixed by the Lessor to be the sum of: ..... dollars (\$.....) (hereinafter called “the capital sum”), which improvements the Lessee hereby agrees to purchase.
- 6.2 All payments due by the Lessee to the Lessor under this Clause shall be made to any authority designated by the Lessor by notice in writing to the Lessee from time to time for that purpose.
- 6.3 If a Lender as defined in clause 25.1.1 makes any loan to enable the Lessee to pay the whole or any portion of the capital sum, the Lender (as the case may be) may do so on the security of the improvements to which the capital sum relates, for which purpose the Lessee is hereby authorised to register a mortgage bond over the improvements in favour of the ~~Lessor~~ or Lender in the appropriate Deeds Registry:

Provided that if the Lender forecloses the bond by exercising “option (b)” as set forth in clause 25.2.3 (b), the Leasehold must be sold in execution together with the improvements.

- 6.4 An annual sum amounting to: ..... dollars (\$.....) shall be payable in advance in respect of the purchase of the improvements on the Leasehold on or before the 1<sup>st</sup> January of each and every year during a period of thirty years:

Provided that the Lessor shall not charge any interest in respect of the annual repayments of the capital sum, except for interest on overdue repayments in accordance with Subclause 6.6;

Provided further that the Lessee shall have a right at any time to take transfer of the improvements subject to the payment of the outstanding balance of

the capital sum and, if the improvements are encumbered by a real right securing a monetary obligation in terms of Clause 25, to the payment of the outstanding balance under of the monetary obligation secured by that real right;

Provided further that the Lessee shall have a right to take transfer of the improvements on payment of a sum representing the outstanding balance of the capital sum that is—

- (i) borrowed from the Lessor or a “Lender” as defined in Clause 25; and
- (ii) secured by a mortgage bond registered in a deeds registry over the lease or the improvements or both in favour of the Lessor or Lender as the mortgagee.

6.5 The Lessee shall not withhold, defer, or make any deduction from any payment due to the Lessor under this Clause, whether or not the Lessor is indebted to the Lessee or in breach of any obligation to the Lessee.

6.6 The Lessee shall be liable for interest on all overdue amounts payable under this Clause at the prescribed rate of interest calculated from the due date of such amounts until they are respectively repaid.

6.7 Any Lender may, upon payment of the fee, if any, fixed under the Agricultural Land Settlement Act or any other law that may be substituted for the same, and with the written consent of the Lessee (or, in the absence of such consent, upon production of proof that the Lessee is indebted to the Lender) request from the appropriate official of the Ministry responsible for the administration of this Lease a written certificate confirming—

(a) that the Lessee is the current holder of this Leasehold; and

(b) that—

- (i) there are no improvements on the Leasehold for which the Lessee is liable to make payment in terms of this Clause; or

- (ii) any improvements on the Leasehold for which the Lessee is liable to make payment in terms of this Clause have been paid for in full; or
- (iii) there are unpurchased improvements for which the Lessee is liable to make payment in terms of this Clause, and the outstanding amount due by the Lessee for the unpurchased improvements;

as the case may be.

6.8 If the Lessee wishes to register this Lease in a Deeds Registry he or she must first obtain from the Lessor a written declaration—

- (i) that there are no improvements on the Leasehold for which the Lessee is liable to make payment in terms of this Clause; or
- (ii) that any improvements on the Leasehold for which the Lessee is liable to make payment in terms of this Clause have been paid for in full; or
- (iii) of the value as at the date of the registration of any unpurchased improvements for which the Lessee is liable to make payment in terms of this Clause;

as the case may be, and the Deeds Registrar shall not register the Lease without such a declaration being produced to him or her

6.9 Upon the production to him or her of a declaration referred to in Subclause 6.7, the Registrar shall endorse the substance of the declaration on the registered copy of the Lease and, where there are any unpurchased improvements on the Leasehold outstanding as at the date of the registration, such an endorsement shall be taken to be a charge on the lease

## **7. ADDITIONAL CHARGES**

In addition to paying rent, the Lessee shall:—

- (a) pay all levies, fees and charges as may be determined by the relevant local authority from time to time in terms of the Rural District Councils Act



[Chapter 29:14] (or any other law that may be substituted for that Act) with effect from a date to be fixed by the local authority; and

- (b) be directly responsible for the cost of electricity and water consumed on the Leasehold to whomsoever shall levy such charges.

## **8. USE OF THE LEASEHOLD**

8.1.0 Use of the Leasehold generally:

8.1.1 The Leasehold shall be used at the Lessee's own expense, for agricultural or pastoral purposes for the Lessee's benefit and that of his or her dependants.

8.1.2 Subject to Clause 25, use of the Leasehold for any other purposes shall be with the consent of the Lessor signified in writing to the Lessee, which consent shall not be unreasonably withheld:

Provided that the Lessor shall have forty-five (45) days in which to respond in writing to a written request of the Lessee under this Clause (and an additional forty-five (45) days after that if the Lessor requests from the Lessee further information on his or her use of the Leasehold for any other purposes), and any failure to do so shall entitle the Lessee to make an application in terms of the Administrative Justice Act (or any other law that may be substituted for that Act) to compel the Lessor to consent to or withhold its consent to the transaction, or otherwise give reasons for the delay.

8.2 The Lessee shall be entitled to use water which is available on the Leasehold strictly in accordance with any agreement or law or otherwise and in particular Clause 11.4 of this Lease, for the agricultural or pastoral purposes abovementioned and for the domestic use on the Leasehold.

## **9. NATURAL RESOURCES**

9.1 The Lessee shall comply in all respects with all laws pertaining to the proper and sustainable use and management of land, water and other natural resources and shall further comply with all requirements which, in the opinion of a Designated

Officer, are reasonably necessary to secure the proper and sustainable use and management of those resources.

9.2 The Lessee shall, at his or her own expense:—

- (a) ensure that no unlawful and indiscriminate tree-felling or wood-cutting is practised;
- (b) report to the relevant authority the existence of noxious weeds;
- (c) cut and maintain fire breaks;
- (d) keep under control all grass so as to preclude any fire hazard to the Leasehold or any adjoining Leasehold or property;
- (e) ensure that there is no poaching and indiscriminate killing of wildlife; and
- (f) undertake measures for the prevention of any soil erosion.

## 10. DISEASE

The Lessee shall take all reasonable measures necessary for the control of both plant and animal disease and shall comply with all laws and regulations and lawful instructions relating thereto.

## 11. PROVISIONS REGARDING MINIMUM DEVELOPMENT AND MAINTENANCE OF IMPROVEMENTS

### 11.1 Development plan

11.1.1 It shall be a condition for signing this Lease that the Lessee shall have submitted to a Designated Officer development plan covering a period of at least five years (annexed as Annexure I hereto) that is in compliance with this Clause, and that the Designated Officer shall have approved the plan.

11.1.2 The Lessee shall keep up to date his or her first development plan, and shall without delay notify in writing the Designated Officer through the District Lands Officer of any **substantial** changes to the plan.

- 11.1.3 Any Lessee to whom this Lease is transferred in accordance with Clause 17 shall be bound by the first development plan in Annexure I during its currency, unless he or she submits to a Designated Officer a new five-year development plan that is in compliance with this Clause, and that has been approved by a Designated Officer.
- 11.1.4 The Lessee shall, at his or her own expense, and to the satisfaction of the Lessor, undertake to initiate minimum developments on the Leasehold as contained in the first development plan in Annexure I within three months of the signature of this Lease or, as the case may be, within three months of the approval of another five-year development plan referred to in Subclause 11.1.3.
- 11.1.5 The following are the minimum developments the Lessee is required to make to the Leasehold, which shall be included in the first development plan:—
- (a) development of a permanent homestead and water supply adequate for the primary human and animal needs of the Leasehold, within the boundaries of the Leasehold;
  - (b) provision of access roads suitably sited, constructed and protected against erosion as approved by the Designated Officer;
  - (c) erection of adequate decent employees' accommodation with access to water and sanitation facilities for workers employed on the Leasehold; and
  - (d) in the case of a Leasehold which is to be developed primarily for cropping purposes, clearance and protection not less than 30% of the assessed arable hectarage per year; and
  - (e) in the case of a Leasehold which is or is to be developed as forest land or as a plantation, clearance and protection not less than 50% of the arable or exploitable land for the purposes of forestry or for plantation purposes, as the case may be.

11.1.6 The **first** development plan may include improvements effected by the Lessee before signing the Lease.

11.1.7 On the expiry of the first development plan the Lessee may, at his or her option, devise another development plan for a period of at least five years, and may notify the Lessor, through the Designated Officer, of the development plan and its contents.

### **11.2.0 Maintenance of Existing improvements and New Improvements**

11.2.1 For the avoidance of doubt, it is declared that this subclause does not apply to any improvements fully purchased by the Lessee in accordance with Clause 6.

11.2.2 The Lessee shall, at his or her own expense, and to the satisfaction of the Lessor, assume responsibility and control of any existing improvements on the Leasehold and listed in Annexure II, with effect from the date of signature of this Lease, and shall maintain in good order and condition all improvements on the Leasehold.

11.2.3 For the purpose of Subclause 11.2.2, unless the Lessee notifies the Lessor in writing on the date of the signature of this Lease of the need for any repairs or replacements to the existing improvements, the Lessee is deemed to have acknowledged that the Leasehold and all the improvements on it were in place, intact and in good order, condition and repair when the Lessee took first occupation of the Leasehold.

11.2.4 For the avoidance of any doubt, the Lessee shall be responsible for the maintenance of, and for all repairs and replacements becoming necessary from time to time in or to, all improvements which are part of the Leasehold.

11.2.5 Should the Lessee fail to carry out any of his or her obligations under this Lease with regard to the maintenance, repair or replacement, the Lessor shall be entitled, without prejudice to any of its other rights or remedies, to effect the required maintenance, repair or replacement and to recover the cost thereof from the Lessee on demand.

11.2.6 The Lessee shall not effect any structural alterations to the existing improvements except with the consent of the Lessor, which consent shall not be unreasonably withheld:

Provided that the Lessor shall have forty-five (45) days in which to respond in writing to a written request of the Lessee under this subclause, and any failure to do so shall signify that the Lessor consented to the proposed alterations.

11.2.7 With respect to agricultural or pastoral improvements, not being agricultural or pastoral improvements to existing improvements, the Lessee may, without the prior consent of the Lessor, effect any improvements of an agricultural or pastoral nature to the Leasehold

11.2.8 The Lessee shall not effect any other improvements which are neither agricultural nor pastoral without the written consent of the Lessor and the approval of the relevant local authority, which consent shall not be unreasonably withheld:

Provided that the Lessor, or the local authority, as the case may be, shall have fourteen (14) days in which to respond in writing to a written request of the Lessee under this subclause, and any failure to do so shall signify that the Lessor or local authority consented to the proposed improvements.

### **11.3.0 Water resources and utilities**

11.3.1 All water resources shall be utilised in terms of the Water Act [*Chapter 20:24*] or any other law that may be substituted for that Act.

11.3.2 Where improvements related to the storage, abstraction or use of water are used by two or more Lessees or the Lessee and the occupants of adjoining properties, responsibility for the allocation and management of the improvements shall vest in the Zimbabwe National Water Authority (ZINWA) established by the Zimbabwe National Water Authority Act [*Cap 20:25*] (or other official agency responsible for water resources that may be substituted for the same), which shall be entitled to levy charges for the use of the water and the maintenance of the improvements.

11.3.3 Where improvements related to resources or utilities other than water are under the direct control of the Lessee, the Lessee shall be entitled to levy any charge for the use and maintenance of the improvements, provided that such charge is approved by the Lessor.

#### **11.4.0 Inspections**

11.4 The Lessor shall carry out annual inspections of the Leasehold to establish:—

- (a) progress achieved in the implementation of the development plan referred to in Subclause 11.1; and
- (b) whether the Lessee is maintaining existing improvements (other than improvements purchased under Clause 6) in good order and condition to the satisfaction of the Lessor.

### **12 FENCING**

12.1 The Lessee shall be deemed to be the occupier for the purposes of the Fencing Act [*Chapter 20:06*] or any other law that may be substituted for that Act.

12.2 The Lessee shall, at his or her own expense, erect and maintain to Government standard specification any fence which may be required by the Lessor on or within the boundaries of the Leasehold.

### **13. CADASTRAL SURVEYS**

13.1 Subject to Subclause 13.2, the Lessor shall, through the offices of the Surveyor-General, undertake the survey of the Leasehold.

13.2 In the event that there is an inconsistency in the survey diagram referred to in Clause 3 and:—

- (a) any layout plan given by the Lessor to the Lessee before the signature of this Lease, the survey diagram referred to in Clause 3 shall prevail; and

- (b) the original survey diagram of the Surveyor-General from which the survey diagram referred to in Clause 3 was copied, original survey diagram of the Surveyor-General shall prevail.
- 13.3 The Lessee shall not hold the Lessor liable for any inconsistency between the layout plan and survey diagram referred to in Subclause 13.2(a) or (b) and shall not be entitled to any difference in the area.
- 13.4 The Lessee shall meet the cost of any survey of the property under Subclause 13.1, and of any road the survey of which is deemed to be necessary by the Lessor:
- Provided that if the road so surveyed serves another one or more Lessees or lawful occupiers of land adjacent to the Leasehold of the Lessee, the cost of the survey of the road shall be equally shared among them.
- 13.5 The original survey diagram of the Surveyor-General referred to in subclause 13.2 (b) may be inspected during normal working hours at the offices of the Surveyor-General.

#### **14 BEACONS AND PEGS**

The Lessee shall, at his or her own expense, ensure that any beacons, or site pegs that are or may be placed or contiguous to the property shall remain undisturbed and in good order.

#### **15 ROADS**

- 15.1 The Lessee shall be deemed to be the occupier for the purposes of the Roads Act [*Chapter 13:18*] (No. 6 of 2001) or any other law that may be substituted for that Act.
- 15.2 The Lessor shall not be liable to construct, maintain, repair or contribute to the cost of any road or way which the Lessee may require, or be entitled to at law, in order to gain access to the Lease holding.

## 16 NUISANCE

The Lessee shall not do, cause or permit to be done anything on the Leasehold or any in building or other improvement on the Leasehold which is or may be a nuisance to the occupiers of any adjoining properties or in the vicinity of the Leasehold.

## 17 SUBLETTING, ASSIGNING, CESSION, PARTNERSHIP, ETC.

### 17.1.0 Conditions under which Leasehold may be encumbered, transferred, etc.

17.1.1 Except as provided in this Clause and subject to this Clause, the Lessee shall not:—

- (a) cede, assign, hypothecate or otherwise alienate or sublet in whole or in part, or donate or dispose of his or her Lease or any of the rights, interests or obligations under this Lease, or place any other person in possession of the Leasehold; or
- (b) enter into a partnership for the working of the Leasehold;

without the consent of the Lessor in writing, which consent shall not be unreasonably withheld:

Provided that any reference to hypothecation in this Clause does not include a reference to any hypothecation in favour of the Lessor or a Lender to secure a loan referred to in clause 6.2, nor does it include a reference to a charge, mortgage or other security upon the Leasehold registered on the Lease in accordance with Clause 25; consequently, no consent of the Lessor is required for these hypothecations, which are governed by Clause 25.

17.1.2 The Lessor shall within forty-five (45) days of the date of the request by the Lessee for the consent referred to in subclause (1) signify in writing its response to the request failing which the Lessee may apply in terms of the Administrative Justice Act [Chapter .....] to compel the Lessor to respond to the consent to or withhold its consent to the transaction, or otherwise give reasons for the delay



17.1.3 No cession, assignment, hypothecation, alienation, subletting, donation, disposal, placement or partnership approved in terms of Subclause 17.1.1 or 17.1.2 shall be valid unless the cession, assignment, hypothecation, alienation, subletting, donation, disposal, placement or partnership is recorded (at the instance of the Lessee, supported by the approval in writing of the Lessor in terms of the proviso to subclause 17.1.1) by way of an appropriate endorsement on the Lease registered in the deeds registry where this Lease is registered.

17.1.4 The Transferee or other person in whose favour a cession, assignment, hypothecation, alienation, subletting, donation, disposal, placement or partnership is made in accordance with Subclause 17.1.1 or 17.1.2 shall be bound by all the provisions of this Lease in every respect as if he or she is a Lessee or the new Lessee, as the case may be.

**17.2. Subletting of infrastructure and natural resources, improvements or infrastructure used in common**

17.2.1 The Lessee may sublet infrastructure such as:—

- (a) agro-processing infrastructure;
- (b) dip tanks;
- (c) tobacco barns;

provided that any rentals charged by the Lessee for such subletting shall be subject to the approval of the Lessor.

17.2.2 Where any natural resource, improvement or infrastructure such as a dam or a water resource is, at the commencement of this Lease, used commonly for the benefit of two or more Lessees or occupiers of properties, whether by virtue of a pre-existing servitude or otherwise, such resource, improvement or infrastructure shall be under the jurisdiction of such authority as may be determined by the Lessor.

### **17.3 Nullity of transactions entered in breach of this Clause**

A transaction entered into by a Lessee in contravention of this Clause shall be of no force and effect from its inception and no purported obligation towards the Lessee or any third party arising from such transaction shall attach to the Lessor:

### **18 SUCCESSION TO LEASEHOLD AND JOINT AND UNDIVIDED SHARES IN LEASEHOLD**

18.1 Subject to subclause 18.2, in the event of the Lessee not being able to continue farming operations due to physical or mental or other inability of whatever nature, he or she may, whether personally or through his or her legal representative, trustee or guardian, as the case may be, seek the consent of the Lessor in writing in accordance with clause 17.1.1 to cede his or her rights to a competent successor (which consent shall not be unreasonably withheld) or, in the alternative, surrender his or her rights to the Lessor, provided that the Lessee shall have complied with the terms of the Lease during his or her tenure and provided further that no such cession or surrender shall affect any pre-existing obligations the Lessee has at the time of the cession or surrender to any third party, including a Lender.

18.2 Where the Lessee wishes to cede his or her rights in accordance with subclause 18.1 to a successor who —

- (a) is a qualifying indigenous Zimbabwean as defined in clause 25.1.1; and
- (b) is a citizen of Zimbabwe of or above the age of twenty-one (21 years);

the Lessee shall not be required to seek the prior consent of the Lessor to the cession in accordance with subclause 18.1 if, before effecting the cession, he or she gives not less than thirty (30) days' written notice to the Lessor of his or her intention to effect the cession, together with the following documentation:

- (i) an affidavit by the successor deposing to the fact that he or she is an indigenous Zimbabwean who is a citizen of Zimbabwe and is at least 21 years of age; and

- (ii) a copy of any identity document relating to the successor that is authenticated by a Commissioner of Oaths;

and thereafter the Lessor's consent to the transaction shall be assumed to have been given unless, at any time before or after the cession, the Lessor finds that the successor has perjured himself or herself in the affidavit referred to in paragraph (a), or that the identity document referred to in paragraph (b) is a forgery, and the Lessor makes its finding known to the Lessee or successor or both by notice in writing.

**18.3 If the Lessee in whose name this Lease is issued:**

- (a) was not married at the time this Lease was issued and subsequently becomes married, his or her spouse shall be deemed to hold an equal joint and undivided share in the Leasehold:

Provided that, unless his or her spouse is a joint Lessee by virtue of being a joint signatory of this Lease, the Lessee as signatory of this Lease shall bear the sole responsibility for ensuring the fulfilment of the conditions of this Lease, including his or her obligations under this Lease to the Lessor or to any third party, and shall not require the prior consent of his or her spouse to do anything necessary to fulfill those conditions or obligations;

- (b) was married to one or more spouses at the time this Lease was issued his or her spouse(s) shall be deemed to hold an equal joint and undivided share in the Leasehold:

Provided that:

- (i) if any spouse was not, on the date this lease is signed and for a period of at least twelve months before such signature, cohabiting as man and wife with the signatory, such spouse shall not be deemed to hold an equal joint and undivided share in the Leasehold, unless the spouse in question is in occupation of, or otherwise actively involved in developing, the Leasehold; and
- (ii) the Lessee as signatory of this Lease shall bear the sole responsibility for ensuring the fulfilment of the conditions of this Lease, including his or her

obligations under this Lease to the Lessor or to any third party, and shall not require the prior consent of any spouse who, by virtue of this paragraph, holds an equal and undivided share in this Leasehold, to do anything necessary to fulfil those conditions or obligations.

- (c) was married to one or more spouses at the time this Lease was issued and subsequently marries another spouse or other spouses, those spouses married after the date this Lease was issued shall be regarded as dependants of the Lessee and not become holders of equal joint and undivided shares in the Leasehold, unless the spouses(s) married on the date this Lease was issued signify to the Lessor in writing their consent to the additional spouse(s) becoming holders of equal joint and undivided shares in the Leasehold:

Provided that the Lessee as signatory of this Lease shall bear the sole responsibility for ensuring the fulfilment of the conditions of this Lease, including his or her obligations under this Lease to the Lessor or to any third party, and shall not require the prior consent of any spouse who, by virtue of this paragraph, holds an equal and undivided share in this Leasehold, to do anything necessary to fulfill those conditions or obligations.

18.4 Upon the death of the Lessee his or her rights under this Lease referred to in subclause 18.3 shall, notwithstanding any testamentary disposition to the contrary, devolve:

- (a) to the surviving spouse of the Lessee, whether or not the surviving spouse was the joint Lessee by virtue of being a co-signatory of this Lease; or
- (b) in the case of a polygamous marriage, to all the holders of equal joint and undivided shares in this Leasehold, if any:

Provided that, in the absence of a joint Lessee, the Lessee shall have the right, by will, to nominate any one of the holders of equal joint and undivided shares in this Leasehold who will be primarily responsible for fulfilling the conditions of this Lease, and such nominee shall have the right to buy out the other holders of equal and undivided shares in this Leasehold by compensating him/her/them for his/her/their assessed share(s) under this Lease;

or

- (c) if there is no holder of an equal and undivided share in this Leasehold, to any of the dependants of the deceased Lessee in accordance with the laws of inheritance applicable to the Lessee, who shall thereupon become holders of equal joint and undivided shares in this Leasehold:

Provided that the Lessee shall have the right, by will, to nominate one of those dependants who will be primarily responsible for fulfilling the conditions of this Lease;

18.5 Where the Lessee dies:

- (a) leaving two or more spouses to succeed him as holders of equal joint and undivided shares in this Leasehold, but fails to make any testamentary nomination as permitted by the proviso to subclause 8.4 (b); or
- (b) without leaving a spouse to succeed him or her and without making any testamentary nomination as permitted by the proviso to 8.4 (c);

the Lessor shall refer the deceased Lessee's family to the Master of the High Court (or, if applicable, to the magistrate or other person in the locality of the Leasehold who is designated to discharge the functions of the Master in that locality under Part IIIA of the Administration of Estates Act [*Chapter 6:01*] or any other law that may be substituted for that Act) to agree upon an inheritance plan for the devolution of the rights of the Lessee to members of his or her family in accordance with Part IIIA of the Administration of Estates Act [*Chapter 6:01*] or any other law that may be substituted for that Act:

Provided that:

- (i) no such inheritance plan shall provide for the subdivision of the Leasehold except with the express prior consent in writing of the Lessor; and
- (ii) if a Lender advanced any credit to the deceased Lessee on the security of the Leasehold, the Lessor shall not permit the inheritance plan to be implemented in relation to the Leasehold unless the person chosen as the executor of the Lessee's estate produces proof to the Lessor in the form of:

- A. a joint written declaration by the executor and the Lender that is sworn before a Commissioner of Oaths or Justice of the Peace that the executor has assented to the Lender exercising either of the options mentioned in Clause 25.2.3; or
  - B. an affidavit by the Lender that the executor has made arrangements satisfactory to the Lender for discharging the deceased Lessee's outstanding obligations to the Lender;
- (iii) the person chosen as the executor of the Lessee's estate must notify the Lessor in writing of the inheritance plan and its particulars before it is approved by the Master; and
- (iv) if no such inheritance plan is drawn up and approved by the Master after a period of more than twelve calendar months from the date when the Lessee died, or if the claims of any Lender referred to in proviso (iii) are not accommodated to the Lender's satisfaction, the Lessor shall have the right to nominate in writing one surviving spouse or one dependant, as the case may be, as the person who shall be primarily responsible for fulfilling the conditions of this Lease, and who shall have the right to buy out the other holders of equal joint and undivided shares in this Leasehold, by compensating him/her/them for his/her/their assessed share(s) under this Lease.

**18.6** If the marriage or, in the case of a polygamous marriage, any of the marriages between the Lessee and his or her spouse is dissolved, the divorced spouse shall retain his or her rights as the holder of an equal joint and undivided shares in this Leasehold unless the Lessee compensates the divorced spouse for his or her assessed share under this Lease:

Provided that where there are two or more joint Lessees by virtue of there being two or more joint signatories of this Lease—

- (a) no Lessee shall have a unilateral right to compensate the other Lessee or Lessees for their assessed shares under this Lease in order to become the sole Lessee;
- (b) if a Lessee wishes to compensate the other Lessee or Lessees for their assessed shares under this Lease in order to become the sole Lessee, and the other Lessee or Lessees do not agree to be so compensated, the issue of which Lessee shall

have the right to compensate the other Lessee or Lessees for their assessed shares shall be determined by an arbitrator (chosen, in the absence of the agreement of the Lessees, by the Lessor) in terms of the Arbitration Act [*Chapter 7:02*] (or any other law that may be substituted for that Act), for which purpose the arbitrator will make his or her award in favour of the Lessee who, in the arbitrator's opinion, has been the one most responsible for the development of the Leasehold.

18.7 The assessed share under this Lease of a divorced spouse or of a nominated holder of an equal joint and undivided share or of a joint Lessee referred to in Subclause 18.4(b) or (c) or subclause 18.5, shall be determined by the Lessor after giving the Lessee and the divorced spouse or nominated holder of an equal joint and undivided shares, or joint Lessee (as the case may be), a reasonable opportunity to make oral or written representations in the matter, and interest on the amount so assessed shall accrue at the prescribed rate of interest for each month that the assessed share remains unpaid, excluding the month in which the share was assessed:

Provided that—

- (i) while the assessed share remains unpaid, the person holding such share shall be subject to all the obligations and entitled to all the rights of the holder of an equal joint and undivided share in the Leasehold, unless, by notice in writing to the Lessee(s) and the Lessor, the holder surrenders his or her share to the Lessee(s); and
- (ii) if the holder of the assessed share is not compensated therefor (together with interest) within twelve months from the date when the value of such share was assessed in accordance with this subclause, and has not earlier surrendered his or her share to the Lessee(s), the holder thereof may require the Lessor to revalue the assessed share, and this subclause shall apply to such revaluation.

18.8 The Lessee may, by endorsement on the Lease at the Deeds Registry where the Lease is registered: —

- (a) record the equal joint and undivided share in this Leasehold of any person who, by virtue of this clause, is the holder of such a share, and the consent of the Lessor shall not be required to effect such endorsement; or

- (b) record an equal joint and undivided share in favour of any person who is not, by virtue of this clause, the holder of an equal joint and undivided share, but in that case Lessee shall seek the consent of the Lessor in writing to do so in accordance with Clause 17.1.1 (which consent shall not be unreasonably withheld):

Provided that where the person referred to in this paragraph is a person who qualifies to be a “successor” as described in Clause 18.2, the prior consent of the Lessor in writing in accordance with Clause 17.1.1 shall not be required, but the Lessee must comply with the requirements of Clause 18.2 as if the person referred to in this paragraph is a “successor”.

## **19 RIGHT OF WAY**

The Lessee shall permit any right of way necessary to give access to other properties or permit such other right of way as he or she may be required to give by the Lessor, which right of way may be registered as a servitude against the Leasehold.

## **20 RIGHT OF ENTRY**

A representative of the Lessor shall be entitled to enter upon the Leasehold at all reasonable times for the purpose of Clause 11.3.4 or 11.5, or as provided by the law.

## **21 WAIVER**

No waiver, express or implied, by the Lessor of any breach of any terms or conditions of this Lease by the Lessee, shall constitute a waiver of any subsequent breach of the same or any other terms or conditions of this Lease, and the acceptance of overdue rental hereunder shall not constitute a waiver of any such breach except in respect of the payment of the rental as accepted.

## **22 RETAKING OF LEASEHOLD BY LESSOR FOR PUBLIC PURPOSES**

22.1 Subject to Clause 25, the Lessor may, subject to at least six months’ notice, and in such manner and under such conditions as it may deem fit, retake the Leasehold for public purposes or any portion thereof if the retaking is reasonably necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the utilization of that or any other



property for a purpose beneficial to the public generally or to any section of the public.

Provided that:

- (a) if at the time the Lessor gives notice of the retaking of the Leasehold or any portion thereof, the Lessee is under any obligation to a Lender, the Lessor shall simultaneously give notice of the retaking to the Lender;
- (b) the retaking of the Leasehold or any portion thereof shall not affect any pre-existing obligations the Lessee has at the time of the retaking to any third party, including a Lender;
- (c) if in relation to the Leasehold to be retaken or any portion thereof there is recorded in favour of a Lender on the Lease registered in a Deeds Registry a charge, mortgage or other security upon the Leasehold for the purpose of securing to the Lender a prior right to recover the amount of the monetary obligation so secured, the Lessor shall deduct such amount from the quantum of compensation for improvements due to the Lessee in terms of this Clause and remit the amount to the Lender.

22.2 The retaking of the Leasehold under Subclause 22.1 is without prejudice to the Lessor's rights to claim arrears of rent, arrears of any capital sum outstanding under Clause 6, damages or otherwise;

22.3 Where the Lease is retaken in terms of Subclause 22.1, such compensation as may be determined in terms in accordance with Subclause 22.4 shall be payable promptly, and in any event not later than 180 days from the date when the Lessor resumes possession of the Leasehold, to the Lessee, or his or her trustee, assignee or legal representative, as the case may be, for improvements owned or effected by the Lessee on the Leasehold and any crops on the Leasehold:

Provided that the Lessor shall not be obliged to pay compensation for:

- (a) any non-agricultural or non-pastoral improvements owned by the Lessee that were effected without the Lessor's consent; or
- (b) any expenditure incurred by the Lessee in complying with his or her obligations of maintenance, repair and replacement under this Lease.

22.4 In default of agreement between the parties, the amount and application of any compensation due to the Lessee in terms of Subclause 22.3 shall be determined by mediation, and where mediation fails by arbitration in terms of the Arbitration Act [*Chapter 7:02*] or any other law that may be substituted for that Act.

22.5 The compensation for improvements owned or effected by the Lessee on the Leasehold and any crops on the Leasehold that is agreed or determined in terms of Subclause 22.4, shall be payable promptly to the Lessee, or his or her trustee, assignee or legal representative, as the case may be, and in any event not later than 180 days from the date when the Lessor resumes possession of the Leasehold, or the date of the conclusion of the mediation or arbitration, whichever is the later.

22.6 Prior to vacating the Leasehold upon its retaking, the Lessee shall destroy all crop residues as is required by the law notwithstanding that the date prescribed for such destruction falls after the date by which the Lessee is required to vacate the Leasehold, and failing the Lessee's compliance with this condition, the Lessor shall have the right to effect such crop destruction and recover the costs thereof from the Lessee or, alternatively, deduct the costs from the quantum of compensation due to the Lessee for improvements:

Provided that if any amount is deductible from the quantum of compensation in favour of a Lender under Clause 22.1(c), such deduction shall be made first before any deduction is made for the purposes of this subclause.

### 23 TERMINATION BY LESSEE

23.1 Without prejudice to any pre-existing obligations the Lessee has at the time of the termination to any third party, including a Lender, the Lessee may, notwithstanding Clause 4, terminate this Lease by giving not less than ninety (90) days' written notice to the Lessor.

Provided that:

- (a) the Lessee shall insert in the *Gazette*, and in a newspaper circulating in the area of the Leasehold, a notice calling upon all Lenders, creditors and persons interested to lodge with the Lessor the particulars of their claims and of their objections to the surrender of the Leasehold within a period of twenty-one days after the notice in the *Gazette*;
- (b) if at the time the Lessee seeks to terminate the Lease he or she is under any obligation to a Lender, the Lessor shall not permit the Lessee to terminate the Lease without producing to the Lessor proof that the Lessee has complied with proviso (a) above and proof in the form of:
  - (i) a joint written declaration by the Lessee and the Lender that is sworn before a Commissioner of Oaths or Justice of the Peace that the Lessee has assented to the Lender exercising either of the options mentioned in Clause 25.2.3; or
  - (ii) an affidavit by the Lender that the Lessee has made arrangements satisfactory to the Lender for discharging his or her outstanding obligations to the Lender;

23.2 Upon termination of this Lease under Subclauses 23.1 the Lessor reserves the right to resume possession of the Leasehold without prejudice to its rights to claim arrears of rent, damages or otherwise;

23.3 Where the Lease is terminated in terms of Subclause 23.1, such compensation for improvements owned or effected by the Lessee on the Leasehold and any crops on the Leasehold as may be determined in accordance with this Clause

shall be payable promptly to the Lessee, or his or her trustee, assignee or legal representative, as the case may be, and in any event not later than 180 days from the date when the Lessor resumes possession of the Leasehold, or the date of the conclusion of any arbitration under subclause 22.5, whichever is the later:

Provided that the Lessor shall not be obliged to pay compensation for:

- (a) any improvements owned by the Lessee that were effected without notifying the Lessor in terms of Clause 11.2.6 or without notification in terms of Clause 11.2.7; or
- (b) any expenditure incurred by the Lessee in complying with his or her obligations of maintenance, repair and replacement under this Lease.

23.4 In default of agreement between the parties, the amount and application of any compensation due to the Lessee in terms of Subclause 22.3 shall be determined by mediation, and where mediation fails arbitration in terms of the Arbitration Act [*Chapter 7:02*] or any other law that may be substituted for that Act.

23.5 The compensation agreed or determined in terms of Subclause 23.4, shall be payable promptly, and in any event not later than 180 days from the date when the Lessor resumes possession of the Leasehold, to the Lessee, or his or her trustee, assignee or legal representative, as the case may be, for improvements owned or effected by the Lessee on the Leasehold and any crops on the Leasehold.

23.6 Prior to vacating the Leasehold upon repossession of the Lease following its termination by the Lessee, the Lessee shall destroy all crop residues as is required by the law notwithstanding that the date prescribed for such destruction falls after the date by which the Lessee is required to vacate the Leasehold, and failing the Lessee's compliance with this condition, the Lessor shall have the right to effect such crop destruction and recover the costs thereof from the Lessee or, alternatively, deduct the costs from the quantum of compensation due to the Lessee for improvements.

## 24 CANCELLATION OF LEASE BY LESSOR

24.1 Subject to Subclauses 24.2 and 24.3, the Lessor reserves the right to cancel this Lease and resume possession of the Leasehold subject to at least ninety (90) days' notice or a longer notice period as the Lessor may deem fit, in the event of:—

- (a) the insolvency of the Lessee under the laws of Zimbabwe; or
- (b) the Lessee is or becomes the Lessee of another Leasehold; or
- (c) any breach of Clauses 2 (concerning the conditions under which a Leasehold may be held by a body corporate other than a religious or educational institution), 8.1.1 and 8.1.2 (use of the Leasehold otherwise than for purposes there permitted or for purposes to which the Lessor has not consented); 9 (failure to comply with laws pertaining to the proper and sustainable use and management of land, water and other natural resources), 11.1.4 and 11.1.5 (failure to initiate minimum developments on Leasehold within specified time, or to make the specified minimum developments), 11.2.6 (making structural alterations to existing improvements without the Lessor's consent), 11.2.8 (making non-agricultural or non-pastoral improvements without the Lessor's consent), 14 (failure to maintain site pegs and beacons undisturbed or in good order), and 17 (failure to obtain the consent of the Lessor for any transfer, etc., of the Leasehold); or
- (d) the Lessee having permitted his or her agricultural or pastoral operations to decline to such an extent that the Leasehold is not being properly managed; or
- (e) the Lessee failing to pay his or her rentals, levies and/or rates to the Lessor or to the relevant local authority, as the case may be, despite having received ninety (90) days' notice from the Lessor to honour his or her obligations in that regard.

24.2 The Lessor shall, before giving notice to the Lessee of the cancellation of the Lease on a ground specified in Subclause 24.1(b), (c) or (d), give to the Lessee at least thirty (30) days' notice of its intention to terminate the Lease, together with its reasons for wishing to do so, and afford the Lessee an opportunity to make representations to it on the matter.

24.3 Having given notice in accordance with subclause 24.2 and having considered the representations (if any) of the Lessee and dismissed them as being without merit, the Lessor shall insert at the Lessee's expense (which expense may be deducted such amount from the quantum of compensation for improvements due to the Lessee in terms of this Clause) in the *Gazette*, and in a newspaper circulating in the area of the Leasehold, a notice:

- (a) calling upon all Lenders, creditors and persons interested to lodge with the Lessor the particulars of any claims against the Lessee that were secured against the Leasehold within a period of twenty-one days after the notice in the *Gazette*; and
- (b) notifying any secured Lender (that is to say any Lender in whose favour there is recorded on the Lease registered in a Deeds Registry a charge, mortgage or other security upon the Leasehold for the purpose of securing to the Lender a prior right to recover the amount of the monetary obligation so secured) of the provisions of Clause 25.3 of the Lease.

24.4 Upon cancellation of this Lease under Subclause 24.1 the Lessor reserves the right to resume possession of the Leasehold without prejudice to its rights to claim arrears of rent, damages or otherwise:

Provided that this subclause and the following subclauses shall not apply where a Lender referred to in subclause 24.3(b) exercises his or her rights under the provisions of Clause 25.3 of the Lease.

24.5 Where the Lease is cancelled in terms of Subclause 24.1, such compensation as may be determined in terms in accordance with Subclause 24.6 shall be payable

promptly, and in any event not later than 90 days from the date when the Lessor resumes possession of the Leasehold, to the Lessee, or his or her trustee, assignee or legal representative, as the case may be, for improvements owned or effected by the Lessee on the Leasehold and any crops on the Leasehold:

Provided that the Lessor shall not be obliged to pay compensation for:

- (a) any improvements owned by the Lessee that were effected without the Lessor's consent; or
- (b) any expenditure incurred by the Lessee in complying with his or her obligations of maintenance, repair and replacement under this Lease.

24.6 In default of agreement between the parties, the amount and application of any compensation due to the Lessee in terms of Subclause 24.5 shall be determined by mediation, and where mediation fails by arbitration in terms of the Arbitration Act [*Chapter 7:02*] or any other law that may be substituted for that Act.

24.7 The compensation for improvements owned or effected by the Lessee on the Leasehold and any crops on the Leasehold agreed or determined in terms of Subclause 24.6, shall be payable promptly to the Lessee, or his or her trustee, assignee or legal representative, as the case may be, and in any event not later than 180 days from the date when the Lessor resumes possession of the Leasehold, or the date of the conclusion of the mediation or arbitration, whichever is the later.

24.8 Prior to vacating the Leasehold upon repossession of the Lease following its cancellation by the Lessor, the Lessee shall destroy all crop residues as is required by the law notwithstanding that the date prescribed for such destruction falls after the date by which the Lessee is required to vacate the Leasehold, and failing the Lessee's compliance with this condition, the Lessor shall have the right to effect such crop destruction and recover the costs thereof from the

Lessee or, alternatively, deduct the costs from the quantum of compensation due to the Lessee for improvements.

## 25 USE OF LEASEHOLD AS COLLATERAL

### 25.1 Interpretation in this Clause

#### 25.1.1 In this Clause:

“agricultural financial assistance” means loans, loan guaranties, subsidies, credits and other forms of financial assistance for agricultural or pastoral purposes, including cropping, aquaculture, poultry, apiculture, piggery, livestock farming, forestry, game ranching, the processing of agricultural produce and any other form of agribusiness;

“identity document” means—

- (a) a document issued to a person in terms of section 7 (1) or (2) of the National Registration Act [*Chapter 10:17*] (or any other law that may be substituted for that Act), or a passport or drivers licence issued by or on behalf of the Government of Zimbabwe; or
- (b) a certified copy of an entry of a birth certificate made in terms of the Births and Deaths Registration [*Chapter 5:02*] (No. 11 of 1986) (or any other law that may be substituted for that Act);

“Lender” means—

- (a) any banking institution registered in terms of the Banking Act [*Chapter 24:20*], or any other law that may be substituted for that Act; or
- (b) any building society registered in terms of the Building Societies Act [*Chapter 24:02*], or any other law that may be substituted for that Act; or
- (c) the Reserve Bank of Zimbabwe; or
- (d) the successor company to the Agricultural Finance Corporation formed under the Agricultural Finance Act [*Chapter 18:02*]; or



- (e) the People’s Own Savings Bank of Zimbabwe established in terms of the People’s Own Savings Bank of Zimbabwe [*Chapter 24:22*]; or the Infrastructure Development Bank of Zimbabwe established in terms of the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*], and any successor to those institutions; or
- (f) any other financial institution established by Act of Parliament which is authorised, whether explicitly or otherwise, to lend money to Lessees; or
- (g) any individual, partnership or company licensed or registered as a moneylender or microfinancier under the Moneylending and Rates of Interest Act [*Chapter 14:14*], the Banking Act [*Chapter. 24:20*], or any other law that may be substituted for the foregoing Acts;

“qualifying indigenous Zimbabwean” means any individual who, before the 18th April, 1980, was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such individual, and who—

- (a) is a citizen of Zimbabwe of or above the age of twenty-one (21 years); and
- (b) before becoming a transferee of this Leasehold upon a sale in execution of this Leasehold, or other transfer or encumbrance of the Leasehold resulting from the discharge or satisfaction of any charge, mortgage or other security for money advanced by him or her as a Lender to the Lessee—
  - (i) does not hold any agricultural land under any form of title, or, if he or she does hold such land, notifies in writing addressed to the Lessee and the Lessor his or her intention to surrender to the State such other agricultural land upon assumption of the rights conferred by such cession, assignment, hypothecation, alienation, subletting, donation, disposal or other transfer or encumbrance of the Leasehold; and
  - (ii) is prepared to personally exercise the rights conferred by such transfer or encumbrance of the Leasehold, or to appoint a person

able to exercise them on his or her behalf, no later than thirty (30) days from the date of such cession, assignment, hypothecation, alienation, subletting, donation, disposal, or other transfer or encumbrance of the Leasehold;

## **25.2 Rights of Lender**

25.2.1 Subject to this Clause, the Lessee may use this Lease as collateral in securing agricultural financial assistance from any Lender:

Provided that if, under Clause 8.1.2, the Leasehold has been approved for any other use than for agricultural purposes, this clause will apply so that the Lessee may use this Lease as collateral in securing financial assistance for that use from any Lender in accordance with this Clause.

25.2.2 The Lessee may (without the prior consent of the Lessor in terms Clause 17), by endorsement on the Lease registered in a deeds registry, record in favour of a Lender a charge, mortgage or other security upon the Leasehold for the purpose of securing to the Lender a prior right to recover the amount of the monetary obligation so secured from any person to whom the Lease is ceded or transferred in accordance with Clause 17.1, whereupon no such cession or transfer shall take effect until the monetary obligation is discharged unless the Lender agrees otherwise.

25.2.3 In discharging any charge, mortgage or other security recorded upon the Leasehold in accordance with Subclause 25.2.2, the Lender in whose favour such charge, mortgage or other security is recorded may do either of the following as the Lender thinks fit in the circumstances—

- (a) exercise the same rights as a Lessee under Clause 17 to—
  - (i) cede, assign, hypothecate or otherwise alienate or sublet in whole or in part, or donate or dispose of the Leasehold or any of its rights, interests or obligations under the Leasehold, or place any other person in possession of the Leasehold; or

(ii) enter into a partnership for the working of the Leasehold;

and, where it exercises any such right, Clause 17 shall apply to the Lender as if it is the Lessee;

or

- (b) obtain an order from a court of competent jurisdiction that any sum is due on the charge, mortgage or other security (“the judgment debt”), and subsequently, if the judgment debt remains unsatisfied, sue out a writ for the attachment of the Leasehold in question and its sale in execution to any qualifying indigenous Zimbabwean:

Provided that any individual (“the Transferee”) who obtains a Leasehold by sale in execution shall, immediately upon taking transfer of the Leasehold, or no later than thirty (30) days thereafter, give written notice to the Lessor of the fact that he or she has taken transfer of the Leasehold in accordance with this subclause, and shall attach to the notice the following documentation:

- (i) an affidavit by the Transferee deposing to the fact that he or she is an qualifying indigenous Zimbabwean; and
- (ii) a copy of any identity document relating to the Transferee that is authenticated by a Commissioner of Oaths;

and thereafter the Lessor’s consent to the transfer of the Leasehold shall be assumed to have been given unless, at any time before or after the conclusion of the transfer, the Lessor finds that the Transferee has perjured himself or herself in the affidavit referred to in paragraph (i), or that the identity document referred to in paragraph (ii) is a forgery, and the Lessor makes its finding known to the Lessee or Transferee or both by notice in writing rejecting or reversing such transfer.

**25.3 Additional Rights of Lender where the Lender chooses to exercise Subclause 25.2.3(b) rights**

25.3.1 This subclause applies in any case where the Lender chooses to exercise the rights referred to in Subclause 25.2.3(b).

25.3.2 If the Lessee defaults on any obligations pursuant to, a charge, mortgage or other security recorded upon the Leasehold in accordance with Subclause 25.2.2, the Lender in whose favour such charge, mortgage or other security is recorded shall have the right to take possession of the Leasehold for as long as it is reasonably necessary to enable it to take recovery of its charge, mortgage or other security:

Provided that—

- (i) the Lender shall no later than seven (7) days after the date when it takes possession of the Leasehold under this Subclause, notify the Lessor in writing accordingly; and
- (ii) if no recovery of its charge, mortgage or other security is made by the Lender within twelve (12) months of the date when it takes possession of the Leasehold under this Subclause, the Lender shall, until such time as it is able to dispose of the leasehold as provided in Subclause 25.2.3 (b) (i) or (ii), assume—
  - (a) all the obligations of the Lessee, including in particular the submission of a development plan in accordance with Clause 11.1;
  - (b) all the rights of the Lessee, other than the right to terminate the lease in terms of Clause 23:

Provided that the Lender may, by mutual agreement with the Lessor, surrender the Lease to the Lessor under an arrangement whereby the Lessor undertakes to find another Lessee, who will discharge any monetary obligation owed to the Lender by the previous Lessee.

## 26 DOMICILIA AND NOTICES

The Parties choose as their *domicilia citandi et executandi* for all purposes relating to the Lease the following addresses:—

- (a) **Secretary for Lands and Rural Resettlement, Private Bag 7779 Causeway, Harare;**
- (b) .....

or such other address as the Lessor or Lessee may hereafter nominate by notice in writing to the Lessor or Lessee, as the case may be.

## 287 ADMINISTRATION

Any act required or permitted to be performed by the Lessor in terms of this Agreement may be performed on behalf of the Lessor by the Secretary for the Ministry of Lands and Rural Resettlement or such other Secretary to a Ministry as the Lessor may nominate or such officer in the Public Service as may be designated by the Secretary.

## 28 DECLARATION

This Lessee (in the case of a Lessee referred to in paragraph (a) or (b) of the definition of “Lessee” in Clause 1.1) hereby declares that he or she does not own any other agricultural land or hold any other lease of agricultural land

## 29 COSTS

The Lessor undertakes to register this Lease in the appropriate Deeds Registry in terms of section 65 of the Deeds Registries Act (or other provision that may be substituted for the same) as soon as practicable after its commencement, and all expenses and stamp duties of and incidental to the preparation, execution and registration of this lease shall be borne by the Lessee.

## 30 ENDORSEMENT OF LEASE FOR PERIODS OF DURATION OF LESS THAN 99 YEARS IN CERTAIN CASES

30.1 In this Clause: —

“corporate Lessee” means a Lessee which is—

- (a) a statutory body or a religious or educational institution; or
- (b) a qualifying body corporate; or
- (c) a public company registered or incorporated in Zimbabwe whose shares are traded in a Zimbabwean stock exchange; or
- (d) a company registered as a foreign company in Zimbabwe under section 330 of the Companies Act [*Chapter 24:03*] (or any other law that may be substituted for that Act); or
- (e) a private company incorporated in Zimbabwe in which—
  - (i) the controlling interest is held by individuals who are qualifying indigenous Zimbabwean as defined in clause 25.1.1; and
  - (ii) no shareholder who holds in a personal capacity a controlling interest in the private company holds a controlling interest in another private company that is or may become a Lessee;

or

- (f) a company licensed under section 26 of the Companies Act [*Chapter 24:03*] (or any other law that may be substituted for that Act).

30.2 The Lessor may, in respect of a corporate Lessee, by endorsement registered on the Lease in a deeds registry, limit the duration of the Lease to a specified period of less than ninety-nine years but not less than ten (10) years, and may, at the same time and by like endorsement, delete or modify any of the foregoing clauses of this Lease in respect of that corporate Lessee.

### 31 ENTIRE AGREEMENT

This Lease constitutes the entire agreement between the Parties. No variation or amendment of it is valid unless it is put in writing and signed by both parties.

**32 EXPIRY AND RENEWAL OF LEASE**

32.1 At least twelve (12) months before the expiry of this Lease the Lessor shall request the Lessee in writing to indicate by writing whether he or she wishes to renew the Lease (and in the absence of any such request the Lessee may in writing indicate to the Lessor whether he or she wishes to renew the Lease)

32.2 The Lessor shall renew the Lease at the request of the Lessee on the same terms and conditions as the expired Lease if the Lessor is satisfied that no grounds exist that would have justified the Lessor in cancelling this lease in terms of clause 24.

**THUS DONE AND EXECUTED BY THE APPEARER AND THE LESSEE AT HARARE ON .....DAY OF ..... IN THE YEARS OF OUR LORD TWO THOUSAND AND TEN (2010) IN THE PRESENCE OF SUBSCRIBING WITNESSES**

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**APPEARER**

**LESSEE**  
  
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**WITNESSES**  
  
1.....  
  
2.....

.....  
**NOTARY PUBLIC**