



**Diamond Pavilion**  
shopping mall

**MEMORANDUM OF AGREEMENT**  
**(STANDARD TERMS & CONDITIONS)**

Between

**RESILIENT PROPERTIES (PTY) LIMITED**

**trading as DIAMOND PAVILION SHOPPING MALL**  
**VAT NO. 4460201363**

Hereinafter called "the Lessor" of the first part, and herein  
represented by  
Philadelphia Babi, duly authorised

AND

.....  
**REG NR:** .....

herein represented by

.....

Being duly authorised hereto  
(Hereinafter referred to as "the Convenor")

**IMPORTANT NOTE: Please read and consider this agreement and its annexures carefully as it shall constitute a binding agreement. You will be requested to declare that you understood the content of this entire agreement and its annexures and more specifically the fact, nature and effect of clauses (terms) next to which you were requested to specifically initial. Please note that initialling next to any clause (term) would not derogate the enforceability of any of the other terms of this agreement. Please do not disregard any terms not so emphasised as such terms will be binding and enforceable**

INITIAL HERE\*

The parties record that they have agreed that the Convenor will stage a promotion \ exhibition (hereinafter referred to as "the event") at Diamond Pavilion Shopping Mall situated at corner of Oliver and McDougal Roads, Monument Heights, Kimberley upon the terms and conditions that are set out hereunder:

**1. PARTICULARS OF THE EVENT**

- 1.1 **NAME OF EVENT** \_\_\_\_\_
- 1.2 **NATURE OF EVENT** \_\_\_\_\_
- 1.3 **EXHIBITION SPACE** \_\_\_\_\_
- 1.4 **APPROXIMATE SIZE OF EXHIBITION AREA** \_\_\_\_\_
- 1.5 **SET UP DATE** \_\_\_\_\_
- 1.6 **BREAK DOWN DATE** \_\_\_\_\_
- 1.7 **VENUE CHARGE**

**1.7.1 FLOORING CHARGE**

R0.00 excl VAT

Flooring will be laid and lifted by Diamond Pavilion Shopping Mall

**1.7.2 DISPLAY FURNITURE CHARGE**

R 0.00 excl VAT per exhibition

**2. VENUE HIRE CHARGE –**

- 2.1 The Convenor agrees to remit the full hire charge referred to in clause 1.7 to Diamond Pavilion Shopping Mall, 21 calendar days prior to the set up date stipulated in 1.5.
- 2.2 All payments to be made by the Convenor in terms hereof shall be made, free of exchange and without deduction or set off, at the address of Diamond Pavilion Shopping Mall set forth in clause 18 below not less than 21 calendar days (hereafter "due date") prior to the set up date. Diamond Pavilion Shopping Mall shall be entitled at any time, on written notice delivered to the Convenor at its address for service of documents and notices, to vary the place for payment from the date of delivery of the notice.
- 2.3 Diamond Pavilion Shopping Mall shall be entitled at any time and without assigning any reason therefore, to refuse to accept any payments made by the Convenor in terms hereof, otherwise than in direct deposit:
- 2.4 The hire charge referred to in 1.7 payable by the Convenor shall be net of value added tax insofar as it is applicable and such VAT shall be recoverable by Diamond Pavilion Shopping Mall from the Convenor in addition.
- 2.5 The event is not confirmed until payment of the full hire charge is made. Should this signed contract, together with the payment referred to in 1.7 above, not be received by Diamond Pavilion Shopping Mall by due date, as stipulated in clause 2.1 above, then the Convenor will be liable for interest at the rate of 15,5 % per annum capitalised monthly from due date to date of final payment.

**3. RELOCATION**

Diamond Pavilion Shopping Mall reserves the right to change the location of the event, where the operation of the Centre as a whole, in the unfettered discretion of the Diamond Pavilion Shopping Mall, necessitates such a move. Diamond Pavilion Shopping Mall will, however, endeavour to relocate the event to a position of equivalent exposure upon 7 calendar days' written notice.

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**4. SUBMISSION OF PLANS AND DETAILS OF PROMOTION**

The Convenor agrees to provide Diamond Pavilion Shopping Mall plans detailing the exact location of any exhibits and the layout and overall appearance of any promotion together with full details of the goods or services to be promoted. The plans must be approved by Diamond Pavilion Shopping Mall in writing at least 14 calendar days prior to the date stipulated in 1.5. No event will be permitted to take place unless such plans have been approved by Diamond Pavilion Shopping Mall. Should the Convenor not comply with the provisions of the clause then, in such event, Diamond Pavilion Shopping Mall reserves the right to cancel the event and to retain the full hire charge which the parties agree shall be the genuine pre-estimate of the damages suffered by Diamond Pavilion Shopping Mall as a result of such a cancellation. Diamond Pavilion Shopping Mall Management retains the right in its unfettered discretion to at any time request of the Convenor to change, remove, alter or amend any aspect of the exhibition.

**5. ERECTION OF EVENT**

- 5.1 The Convenor shall AT THE Convenor's own cost, provide all the promotional equipment and advertising material required to stage the event. It is agreed that Diamond Pavilion Shopping Mall shall not be liable for any loss or damage of whatsoever nature and howsoever caused to the said promotional equipment.
- 5.2 It is agreed that, unless otherwise specified in clause 1.5 and 1.6, all set building and erection of any exhibits and promotional material will be undertaken on the date specified in 1.5 before 9am and dismantled and removed from the Centre after 6pm or as specified in clause 1.6.

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- 5.3 The Convenor agrees that it will not use any construction materials that are flammable, toxic, and potentially injurious or in anyway represent a safety or health hazard, and no electrical points, cables or fittings may be left exposed and accessible to the public. Diamond Pavilion Shopping Mall shall be entitled to call for a certificate from a qualified electrician at the cost of the Convenor certifying all electrical work required for the event to be safe.

**6. LICENSE**

The Convenor warrants that in any instance where the type of promotion activity requires either the permission of, or the granting of a license from any licensing or local authority, such action is the responsibility of the Convenor and written proof of such approval must be presented to Diamond Pavilion Shopping Mall on demand.

**7. USE OF EXHIBITION AREA**

The Convenor shall use the exhibition area for the purpose stipulated in 1.2 and for no other purpose whatsoever without the prior written consent of Diamond Pavilion Shopping Mall. Diamond Pavilion Shopping Mall does not warrant that any other exhibition area in the Centre will not be let for the same or similar to purpose stipulated in 1.2 at the same time or that any other convenor or tenant in the building will not compete with the Convenor.

**8. MANNING OF THE EVENT**

- 8.1 The Convenor agrees that the event is to be fully operational during the minimum trading hour of the Centre in force during the period of the promotional event. However, should the event be of such a nature that a security service is required, then the Convenor shall provide, at its cost, a security arrangement to police the event. This security arrangement will be disclosed to Diamond Pavilion Shopping Mall together with the Plan, and operate at all times under the final instruction of the security of the Diamond Pavilion Shopping Mall.
- 8.2 Should the Convenor wish to dismantle the event at the end of each day, and then set up again the following morning, the Convenor agrees to remove, at its cost, all promotional equipment from the given location, including all tables, chairs and screens.

**9. ADVERTISING**

The Convenor shall provide Diamond Pavilion Shopping Mall a copy of any leaflet, poster and other advertising material to be approved by Diamond Pavilion Shopping Mall at least 7 (seven) days prior to the scheduled date of the event. Should Diamond Pavilion Shopping Mall not approve these documents, this agreement may be cancelled.

**10. SERVICES**

The Convenor agrees that should the event, in the opinion of Diamond Pavilion Shopping Mall, consume an abnormal amount of power, water or other supplied service then, Diamond Pavilion Shopping Mall may, at its discretion, levy an additional charge to the Convenor.

**11. STORAGE**

In the event of Diamond Pavilion Shopping Mall agreeing to provide the Convenor with any form of overnight or temporary storage space, it is agreed by the parties that Diamond Pavilion Shopping Mall shall not be liable for any loss or damage of whatsoever nature and however caused to the promotion equipment.

**12. CONVENOR'S OBLIGATIONS**

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The Convenor agrees to maintain, at all times, a high standard of exhibition \ promotion which is in the opinion of Diamond Pavilion Shopping Mall, of a level commensurate with the image of the Centre. Without derogating from the generality of the above, the following rules shall be strictly observed by the Convenor:

- 12.1 no banners shall be permitted without prior written permission by Diamond Pavilion Shopping Mall;
- 12.2 no display material shall be permitted on any pillars, walls or shop windows;
- 12.3 all signage shall be printed or professionally sign written - no hand written signs shall be permitted;
- 12.4 all tables shall be covered, in keeping with the high standard of the Centre;
- 12.5 no exhibition or material display shall obscure the visibility of, or access to, any shops sited in the proximity of the promotional area. In this regard, no display or any element thereof may exceed 1.5 meters in height, and strictly no gazebo's allowed.
- 12.6 the Convenor agrees that no money be exchanged in the exhibition / promotional area's (unless specific arrangements are made and Diamond Pavilion Shopping Mall's approval thereto is confirmed in writing);
- 12.7 the Convenor agrees that cooking demonstrations are not permitted in the promotional area - food samples may be given if prepared under conditions stipulated by the relevant local authority and Diamond Pavilion Shopping Mall;
- 12.8 the parties agree that no alcohol may be consumed in the exhibition / promotional area (lunches, cocktail parties etc. must be discussed with and approved by Diamond Pavilion Shopping Mall in writing);
- 12.9 that any audio visual devices of whatsoever nature shall be used in a manner so as not to constitute a nuisance to any tenants, patrons or the management of the Centre;
- 12.10 the Convenor agrees that in the event of any large equipment, display material or vehicles or any item of excessive weight required to be brought into the Centre, the Convenor shall advise Diamond Pavilion Shopping Mall a least 7 days in advance of the date and time to allow Diamond Pavilion Shopping Mall to arrange access to the Centre or to arrange approval by a structural engineer;
- 12.11 the Convenor shall supply a list of the names and addresses of any exhibitors other than the Convenor taking part in the event, at least 14 days prior to the scheduled date thereof, together with a copy of the standard contract between the Convenor and any such exhibitor relating to the event as well as the nature of the goods and services exhibited or

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promoted;

- 12.12 Such list of participants must be approved by Diamond Pavilion Shopping Mall in writing and Diamond Pavilion Shopping Mall reserves the right to exclude participants notwithstanding any contact entered into between the Convenor and the participant;
- 12.13 the contract between the Convenor and participant must include the requirement that the participant is aware of and accepts all the conditions of the agreement between Diamond Pavilion Shopping Mall and the Convenor;
- 12.14 the promotion displays are to conform to the plans \ proposals approved by Diamond Pavilion Shopping Mall and no variation will be permitted without prior written approval of Diamond Pavilion Shopping Mall. Should you not comply with herewith, you will be asked to leave the premises immediately without any form of refund.
- 12.14a the convenor is expected to ensure that exhibition space is neat and tidy at all times and fully cleaned up after the exhibition.
- 12.14b. ~~Tables are available for use by convenors. A R50.00 refundable deposit per table will be charged. When the tables are returned by the convenor at the security office, the money will be refunded. NO tablecloths are available, convenors must supply their own.~~

**12.15 The Convenor shall: -**

- 12.15.1 not store or leave or permit the storage or leaving of any goods outside the exhibition / promotional area in the passages, lifts or on the landing of the building, nor in the pathways, stairs, parking areas, gardens or any other part of the common area of the Centre;
- 12.15.2 not bring any unreasonably heavy article into the building without Diamond Pavilion Shopping Mall's prior written consent;
- 12.15.3 not contravene or permit the contravention of any laws or regulations relating to owners, tenants or occupiers of business premises or affecting the conduct of the business, more specifically and without limitation to the Consumer Protection Act 68 of 2008 and the Regulations thereunder;
- 12.15.4 not contravene nor permit any contravention of the conditions of title where under the property is held by Diamond Pavilion Shopping Mall;
- 12.15.5 not commit or permit the commission of any nuisance on the property or cause annoyance or discomfort to any of the tenants of the building;
- 12.15.6 not display, sell merchandise, allow carts, tables, trestles, chairs, signs, devices or any other objects to be stored, or to remain outside the exhibition / promotional area;
- 12.15.7 not permit the accumulation of refuse in, or outside the exhibition / promotional area, save in refuse bins provided for that purpose. All refuse shall be kept in the kind of container specified by Diamond Pavilion Shopping Mall in those positions indicated by Diamond Pavilion Shopping Mall and shall be removed from site daily by the Convenor. Refuse may not be disposed of in the mall bins and in the walkways;
- 12.15.8 not allow any deceptive, misleading or fake marketing, or any deceptive, misleading or fake product to be displayed;
- 12.15.9 not promote any harmful goods or services;
- 12.15.10 not allow any impression of whatsoever nature, either tacit or expressed, to be created that Diamond Pavilion Shopping Mall or its owners or its agents are associated with or underwrites any goods or services;
- 12.15.11 at all times disclose that the Convenor is an independent exhibitor;
- 12.15.12 not overload the floors, walls or structure of the exhibition / promotional area and the Centre;
- 12.15.13 not interfere with electrical installations in the exhibition / promotional area and the Centre or the air conditioning installation or equipment and not affix any electrical fittings other than those approved by Diamond Pavilion Shopping Mall;
- 12.15.14 not solicit, or canvass for business in any area (including the parking areas) including the exhibition / promotional area and not distribute any pamphlets, handbills or other advertising matter on motor cars parked in the parking area or in any other part of the common area;
- 12.15.15 not hold or permit the holding of sales by public auction in or upon the (including the parking areas without Diamond Pavilion Shopping Mall's prior written consent
- 12.15.16 not bring onto the premises any fittings, fixtures or equipment not part of the Convenor's approved layout as per clause 4.

**12.16 SIZE OF FLOORING AND RULES FOR VEHICLE DISPLAYS**

- 12.16.1 The @home court can ONLY accommodate 2 (two) vehicles. The flooring will be laid in 2 x 16m<sup>2</sup> blocks. Bumpers may not stick out over the edge of the flooring.
- 12.16.2 The African Bank court can only accommodate 1 (one) vehicle. The flooring will be laid in 2 x 8m<sup>2</sup> blocks. Bumpers may not stick out over the edge of the flooring.
- 12.16.3 Entrance 1 court can ONLY accommodate 1 (one) vehicle. Bumpers may not stick out over the edge of the flooring.
- 12.16.4 Vehicles MUST be parked by **9.00am** on the morning of the start of your exhibition. Vehicles arriving after this time WILL NOT be allowed into the Mall.
- 12.16.5 Vehicles may only be removed in accordance with the stipulations of Clause 1.6.

**13.**

**BREACH**

- 13.1 Should the Convenor fail to pay any amount due in terms of this agreement to Diamond Pavilion Shopping Mall or commit or permit the commission of a breach of any of the conditions contained herein, whether or not such breach goes to the root of this contract, Diamond Pavilion Shopping Mall shall be entitled, but not obliged, (notwithstanding any waiver or conduct on the part of Diamond Pavilion Shopping Mall that would otherwise stop it or anything contrary herein contained)

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to immediately cancel this agreement upon 7 calendar days' written notice. If this agreement is cancelled due to a breach by the Convenor, Diamond Pavilion Shopping Mall shall be entitled:-

- 13.2 to retain all and moneys paid by the Convenor to Diamond Pavilion Shopping Mall in the respect of the event as a genuine pre-estimate of the damages suffered by Diamond Pavilion Shopping Mall in the terms of clause 2 of this agreement;
- 13.3 to institute action for the recovery of any amounts due in terms of this agreement and any other remedies available to Diamond Pavilion Shopping Mall in law;
- 13.4 the Convenor shall remove all its equipment from the promotional area within 2 hours of such notification on cancellation, failing which Diamond Pavilion Shopping Mall shall be entitled to remove such equipment at the cost of the Convenor and the Convenor shall have no claim whatsoever, either for damages or otherwise, against Diamond Pavilion Shopping Mall;
- 13.5 to elect that any other agreement between the Convenor and Diamond Pavilion Shopping Mall for any future event to be held in the Centre shall be regarded as having duly cancelled and be no further force or effect.

**14. INSURANCE**

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The Convenor hereby warrants that -

- 14.1 it has and will maintain, at its cost, insurance cover in respect of:-
  - 14.1.1 public liability, and
  - 14.1.2 loss or damage caused by all risk of whatsoever nature
 and will, if called upon by Diamond Pavilion Shopping Mall to do so, furnish written proof of such insurance cover.
- 14.2 the Convenor will have no claim or right of action against Diamond Pavilion Shopping Mall, the owners of the Centre, the directors, servants or agents for the damage, loss or otherwise arising out of or by reason of any permission, stipulation or direction given, being varied or revoked by Diamond Pavilion Shopping Mall or through any other cause whatsoever, nor shall Diamond Pavilion Shopping Mall be responsible for any personal injury which may be sustained in or about the Centre to the Convenor, its directors, servants, agents, customers or any other person to whom such injury may be caused.

**15. INDEMNITY**

- 15.1 The Convenor hereby indemnifies and holds Diamond Pavilion Shopping Mall harmless against any action against Diamond Pavilion Shopping Mall for any loss or damages.
- 15.2 Without limitation of the foregoing, the Convenor indemnifies Diamond Pavilion Shopping Mall against any claim by any third party resulting from any goods or services promoted, exhibited or supplied by the Convenor, including costs to oppose or defend such claim.
- 15.3 Diamond Pavilion Shopping Mall shall not be responsible for any damage of whatsoever nature, howsoever and when so ever arising, including, but not limited to, loss of profits, consequential damage or any damage to stock-in-trade, equipment, machines, raw materials, papers or other articles kept in the Centres (whether the property of the Convenor or that of anyone else), by rain, hail, lightening or fire or by reason of riots, strikes, or states enemies or as a result of theft or burglary, with or without forcible entry or through any cause whatsoever, nor shall Diamond Pavilion Shopping Mall be responsible for any personal injury which may be sustained in or about the premises or by the complex by the Convenor or any of the directors, employees, servants, agents, customers or invitees of the Convenor or by any other person to whom such injury may be caused, and the Convenor hereby indemnifies Diamond Pavilion Shopping Mall against any claim of whatsoever nature that may be made against the Diamond Pavilion Shopping Mall by any of the directors, employees, servants, agents, customers or invitees of the Convenor in respect of personal injuries so sustained or in respect of the loss of or any damage to anything contained in or brought into the premises.
- 15.4 The provisions of 15.1 and 15.3 shall apply notwithstanding that any loss, damage or injury therein referred to may occur or be sustained in consequence of anything done or omitted by Diamond Pavilion Shopping Mall or any of its directors, servants or agents, unless as a consequence of gross negligence.

**16. WHOLE AGREEMENT**

This document constitutes the sole record of the agreement between the parties, and neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein. No addition to variation or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on the behalf of the parties.

**17. NON-WAIVER**

No indulgence which Diamond Pavilion Shopping Mall may grant to the Convenor shall constitute a waiver of any of the rights of Diamond Pavilion Shopping Mall who shall not thereby be precluded from exercising any rights against the Convenor which may have risen in the past or which arises in the future

**18. NOTICE OF ADDRESS FOR SERVICE OF DOCUMENTS AND NOTICES (DOMICILIUM)**

The parties choose their address for service of documents and notices (*domicilium citandi et executandi*) for service of any notice, payment of any amounts due, the serving of any process and for any other purpose arising from this agreement as follows:

**Convenor :**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Diamond Pavilion Shopping Mall:**

Centre Management  
Cnr Oliver and McDougal Roads  
Monument Heights  
Kimberley,8301

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**19. WARRANTY OF AUTHORITY**

The person signing agreement on behalf of the Convenor expressly warrants his authority to do so.

**20. LEGAL COSTS**

The CONVENOR shall be liable for all legal costs and disbursements (including attorney and own client costs and collection commission) incurred by Diamond Pavilion Mall in enforcing its rights hereunder whether or not legal proceedings are commenced.

**21. OFFER BY CONVENOR**

Signature of this document by the Convenor shall be an offer by the Convenor to Diamond Pavilion Shopping Mall to enter into this agreement which offer shall be irrevocable for a period of thirty days from the date of signature by the Convenor. This Agreement shall be concluded and binding on Diamond Pavilion Shopping Mall only when signed by it, until which time no obligation of any kind whatsoever shall exist on the part of Diamond Pavilion Shopping Mall in respect of any matter herein provided for or referred to.

**22. JURISDICTION**

- 22.1 At the option of the aggrieved party, any action or application arising out of this agreement, its enforcement or any cancellation thereof may be brought either :-
  - 22.1.1 in the magistrate's court having jurisdiction notwithstanding that the amount in issue may exceed the jurisdiction of such court; and
  - 22.1.2 in the North Gauteng High Court at Pretoria, and the Convenor hereby consents to the jurisdiction thereof in respect of any appeal or action brought against it by Diamond Pavilion Shopping Mall arising out of this agreement, its enforcement or cancellation
- 22.2 It shall be within the absolute discretion aggrieved party whether to proceed against the defaulting party in the magistrate's court referred to in clause 22.1.1, the High Court referred to in clause 22.1.2, or any other court having jurisdiction.

**23. SEVERABILITY**

Should any one or more of the provisions of this lease be unenforceable then such provision(s) shall be severed from this lease and the remaining provisions shall be of full force and affect.

**24. LIMITATION OF LIABILITY - NEGLIGENCE**

Notwithstanding any provision in this agreement, same shall not limit or exempt liability attributable to gross negligence **INITIAL HERE**

This done and signed at ..... on the ..... day of ..... 20....

**WITNESS**

- 1. ....
- 2. ....

.....  
**For and on behalf of the Convenor  
being duly authorised**

This done and signed at ..... on the ..... day of ..... 20....

**WITNESS**

- 1. ....
- 2. ....

.....  
**For and on behalf of DPM**

**Annexure "A"**A CERTIFICATE ISSUED BY A CONVENOR WHO IS CLASSIFIED AS A CONSUMER IN TERMS OF THE CONSUMER PROTECTION ACT**Failure to sign this certificate shall in no way affect the validity of this agreement**

I \_\_\_\_\_ on behalf of the Convenor being duly authorised, confirm that I have read and understood the terms and conditions of this Agreement. All the clauses in the Agreement were read by me and the fact, nature and effect of all the clauses were understood by me as well as the fact that some of these clauses contain terms that may affect the Convenor now or in the future.

I understand that by bringing these terms and conditions to my attention it does not have any effect on the legal standing or enforceability of any other terms and conditions not specifically highlighted or brought to my attention and which depending on any circumstances may affect the Convenor when enforced. I confirm that I have read and understood the entire Agreement.

**Only to be completed by juristic persons who qualify as a consumer:**

I hereby declare, on behalf of the Convenor being \_\_\_\_\_ **(COMPANY OR CLOSE CORPORATION)**, that the Convenor qualifies as a consumer in terms of the Consumer Protection Act 68 of 2008, as amended from time to time.

SIGNED: \_\_\_\_\_

FULL NAMES IN PRINT: \_\_\_\_\_

DATE: \_\_\_\_\_

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