Deed of Surety

1. Definitions

1.1 "the lease": The agreement of lease concluded between the Creditor and the

Debtor on or about _____

1.2 The Surety: _____(full names of *surety*)

of _____

_____ (*address of surety*)

with ID Number: _____ (*ID number of surety*)

[hereinafter referred to as "the Surety"]

1.3 The Creditor: _____

(*name of Lessor in terms of lease agreement*)

[hereinafter referred to as "the Creditor"]

1.4 The Debtor: _____

(*name of Lessee in terms of lease agreement*)

[hereinafter referred to as "the Debtor"]

2. Suretyship

The Surety herewith binds himself as surety to the Creditor for and on behalf of the Debtor for the due performance by the Debtor of his obligations arising out of the lease between the Creditor and the Debtor.

3 Acknowledgments and releases [acknowledgments]

It is agreed:

3.1 All admissions or acknowledgments by the Debtor to the Creditor shall be binding on the Surety, including tacit and implied acknowledgments.

3.2 The Creditor shall be at liberty, without affecting its rights hereunder, to release, abandon, realise or sell securities and to give time or compound or make any other arrangements with:

3.2.1 the Debtor; or

3.2.2 the Surety or any of them; or

3.2.3 any other sureties, guarantors or indemnifiers for the Debtor;

whether before or after any obligation has fallen due for performance.

3.3 Any leniency, extension of time or waiver which may be granted to:

3.3.1 the Debtor; and/or

3.3.2 a Surety in terms hereof; and/or

3.3.3 any other sureties for the Debtor; and/or

3.3.4 any third party;

whether before or after the obligation has fallen due for performance shall not be construed as a waiver of any of the rights or claims of the Creditor against any Surety hereunder and the Surety hereby waives any right to rely on any defence involving or based on waiver, estoppel or prejudice to the Surety as surety.

3.4 Notwithstanding any part payment by the Surety or on its behalf, the Surety shall have no right to:

3.4.1 any cession of action in respect of such part payment;

3.4.2 take any action against:

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3.4.2.1 the Debtor;

3.4.2.2 any other surety for the Debtor;

in respect thereof unless and until the indebtedness of the Debtor to the Creditor shall have been discharged in full.

3.5 The Surety shall not be released from liability hereunder if the Creditor makes any payment to the Debtor which ought not to have been made, withholds performance of any obligation to the Debtor which ought to have been performed or in any other manner prejudices the rights of the Surety or the Debtor.

3.6 The Surety shall, if so required by the Creditor, render the performance due by the Debtor even if such performance is one of *ad factum praestandum* and a failure to perform shall be a breach by the Surety.

3.7 The nature, extent, amount and terms of any agreement between the Debtor and the Creditor shall at all times be within the discretion of the Creditor and the Surety shall not be released from any liability by reason of the entering into of any such agreement or the failure on the part of the Creditor to perform in whole or in part under any such agreement.

3.8 If any obligation is novated the Surety shall be liable for the original obligation or the novated obligation at the election of the Creditor and whether or not the Surety was aware of the novation.

3.9 The Surety waives his or its rights to rely upon prescription of either any principal obligation or any accessory obligation created by this deed.

4 Extensions of time

If the principal debt or any part thereof is due for payment and the Creditor compromises with the Debtor, gives the Debtor any indulgence or extended time or extended terms for payment, then the creditor will still be entitled to forthwith recover from the Surety the amount due and owing by the Debtor prior to any compromise, indulgence or extended time or extended terms of payment granted by the Creditor to the Debtor.

5 Appropriations

The Creditor is irrevocably authorised to apply any monies received by the Creditor from any Surety in terms of this suretyship against the indebtedness to the Creditor of the Debtor in such manner as the Creditor in its entire discretion may think fit, including the appropriation by the Creditor of a payment to any debt due by the Debtor which for any reason is not secured hereunder.

6 Entire agreement

6.1 No variation, relaxation, waiver of, addition to, deletion from or consensual cancellation of this suretyship or any of the terms thereof (including this clause) shall be of any force or effect unless reduced to writing and signed by the Surety and confirmed by the Creditor in writing.

6.2 It is agreed that:

6.2.1 this suretyship constitutes the whole of the agreement between the Surety and the Creditor;

6.2.2 there are no conditions suspending its operation which may terminate the liability of the Surety;

6.2.3 no warranties, promises, representations or inducements of whatsoever nature have been made or given by the Creditor or any other person including the Debtor to the Surety to enter into this suretyship or to bind the Surety to the terms hereof.

7 Cession by creditor

The Creditor may at any time without the consent of the Surety, cede or assign or transfer and make over all or some of its right, title and interest in, to and arising out of this suretyship or any part thereof.

8 Covering suretyship

This suretyship is a continuing covering suretyship for the present and future obligations of the Debtor to the Creditor.

9 Suretyship remains in force

Subject to clause 10, this suretyship shall remain in force and effect notwithstanding any interim or final settlement of accounts and the subsequent incurring of any new obligation by the Debtor and notwithstanding the death or other legal disability of the Surety.

10 Release

10.1 It is agreed that the Surety may only be released from this suretyship by written notice from the Creditor releasing the Surety. Any such release shall be restrictively interpreted to apply only to the Creditor giving the release, the Surety receiving the release and the Debtor in respect of which the release is given.

10.2 Should this suretyship be terminated by any aforesaid notice or for any other reason, the Surety shall be and remain liable for all obligations of the Debtor as at the date of termination of the suretyship.

11 Revival

11.1 If:

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11.1.1 any performance which has the effect of reducing and/or discharging the liabilities of the Surety hereunder is:

11.1.1.1 set aside under the Insolvency Laws or for any reason whatsoever by order of court; or

11.1.1.2 refunded to the Debtor, or the Debtor's trustees or liquidator by agreement; or

11.1.2 any security is set aside by the court or released by agreement;

the Surety shall be liable to the Creditor as surety for the Debtor in respect of the Debtor's obligations to the Creditor arising from or revived by the setting aside and/or refund of such payment, or the setting aside or release of such security, notwithstanding that the same may take place after the termination of the liability of the Surety hereunder in other respects.

11.2 All references herein to the indebtedness or debts of the Debtor shall accordingly be deemed to include any indebtedness arising from or revived by the setting aside and/or refund of such payment or the setting aside or release of such security.

11.3 The Creditor shall accordingly be entitled to retain this suretyship document notwithstanding any termination of the Surety's liability hereunder in other respects and it is agreed that this suretyship document is and shall at all times remain the property of the Creditor.

12 Proof

12.1 Any obligation of the Debtor and/or the amount of the indebtedness of the Debtor and of the Surety hereunder to the Creditor at any time (including interest, the rate of interest and the method of calculation thereof) shall be determined and conclusively proved by a certificate under the signature of any one director of the Creditor.

12.2 It shall not be necessary to prove the appointment or signature of the person signing any such certificate.

12.3 Such certificate shall be:

12.3.1 conclusive proof of the obligation and/or amount of the Surety's indebtedness hereunder including conclusive proof of an amount which would otherwise be illiquid;and

12.3.2 valid against the Surety in any competent court for the purpose of obtaining summary judgment against the Surety thereon; and

12.3.3 conclusively deemed to be sufficient particularity for the purposes of pleading or trial in any action instituted by the Creditor against the Surety under this suretyship.

13 Additional security

The rights of the Creditor under this suretyship shall not be affected or diminished if the Creditor at any time obtains any additional or other suretyships, guarantees, securities or indemnities from the Surety or any other third party whatsoever in connection with the obligations of the Debtor and/or the Surety.

14 Disability of debtor

14.1 If the Debtor:

14.1.1 is placed under liquidation or judicial management or sequestration (whether provisionally, finally, compulsorily or voluntarily); or

14.1.2 suffers any other legal disability; or

14.1.3 becomes subject to:

14.1.3.1 the provision of any law for the assistance or benefit of debtors; or

14.1.3.2 a compromise, composition or other arrangement with any creditor of the Debtor;

the Creditor shall be entitled to prove against the estate of the Debtor for the full amount of any indebtedness due to it, whether actual or contingent, and to accept any dividend on account and in reduction of the indebtedness without prejudice to the rights of the Creditor against the Surety.

14.2 The Surety further acknowledges that:

14.2.1 in any of such events and for as long as any of the obligations of the Debtor remain undischarged, the Surety shall not be entitled to prove any claim against the Debtor without the prior written authority of the Creditor;

14.2.2 the Creditor holds *in securitatem debiti* all and any claims that the Surety might have or might in the future acquire against the Debtor in terms of the cession herein contained.

14.3 Should the Debtor be placed under judicial management, whether provisional or final, then in which event the obligations of the Surety under this suretyship shall cover all debts incurred by the Debtor to the Creditor whilst under judicial management.

15 Multiple sureties

15.1 The Surety undertakes not to prove, make or take action in respect of any claim against any other Surety or the estate of any other Surety whether such claim arises from or in connection with any payment made by the Surety or any other Surety to the Creditor in terms hereof or by reason of any other cause of indebtedness until all claims of the Creditor against the Debtor and any other Surety have been paid in full.

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15.2 The obligations of the Surety in terms of this clause 15 also, without detracting from the generality of the aforegoing, preclude the Surety from proving a claim against any other Surety, or the estate of any other Surety where such other Surety:

15.2.1 has been sequestrated; or

15.2.2 has been placed under winding up, whether provisional or final; or

15.2.3 has assigned his or its estate; or

15.2.4 has been placed under judicial management, whether provisional or final or under administration; or

15.2.5 has died; or

15.2.6 has died and his estate is being administered as insolvent in terms of the Administration of Estates Act;

the Surety having waived all rights of recourse and cession of actions against other Sureties until all the claims of the Creditor against all the Debtors have been met in full.

16 Cession

16.1 As security for the discharge of the obligations assumed by the Surety in terms hereof, the Surety hereby individually and *in securitatem debiti* cedes to the Creditor any claims which now are or which may hereafter become due to the Surety by the Debtor or any third party from any cause of indebtedness whatsoever (including but not limited to claims arising from signature of this suretyship by the Surety and from payments made by the Surety by virtue of this suretyship).

16.2 The Surety does hereby irrevocably and *in rem suam* authorise and appoint the Creditor with full power to sign and execute all and any documents on behalf of the Surety which may be necessary to give effect to or to enforce the rights afforded to the Creditor in terms of this cession herein contained.

16.3.1 The Surety hereby further agrees that, if prior to the signature of this suretyship the Surety has ceded such claims to anyone whomsoever, this cession shall be deemed to be a cession of all reversionary rights of the Surety in and to any such claims after payment of all amounts secured by the prior cession(s) or after the loss or abandonment for any reason of any of the rights of the cessionary/cessionaries thereunder.

16.3.2 The Surety warrants that the only prior cessions are those disclosed to the Creditor in terms of the schedule hereto.

16.4 The whole of such cession shall remain of full force and effect until all the liabilities of the Debtor to the Creditor have been extinguished.

16.5 The cession hereby conferred upon the Creditor is conferred as continuing covering security for past, present, future, prospective and/or contingent liabilities of the Debtor to the Creditor and is subject *mutatis mutandis* further to clauses 8, 9 and 10 hereof.

16.6 Should there at any stage be no debtor who owes any obligation to any Creditor the cession herein contained shall lapse but shall immediately and simultaneously revive if any debtor thereafter owes any obligation to any Creditor and the Surety is still bound in terms thereof.

17 Cash security

For as long as the Creditor may think fit, at its option and in its sole and absolute discretion, any money paid by the Surety to the Creditor may be treated as cash security from the Surety to be held by the Creditor free of interest until the obligations of the Debtor and/or the Surety shall have been fully discharged, or may be applied to such debt or debts of the Debtor as the Creditor may deem fit.

18 Immediate performance

Should the Debtor fail to discharge any of its obligations to the Creditor or any one of its other creditors, the Creditor shall be entitled notwithstanding any contrary arrangement with the Debtor, to demand from the Surety immediate performance of all the obligations then owing by the Debtor to the Creditor whether or not the due date for the performance of the obligations shall have arrived.

19 Warranties and indemnity

19.1 The Surety warrants that:

19.1.1 all contracts entered into or to be entered into by the Debtor with the Creditor were or will be at the time of the conclusion thereof within the scope, authority, power and objects of the Debtor;

19.1.2 all resolutions of and signatures by directors of the Debtor were, or in the case of future contracts, will be properly and with due authority passed and/or executed and/or made;

19.1.3 all such contracts are or will be, and will at all times remain valid and legally enforceable;

19.1.4 the execution of this suretyship is to the benefit of the Surety;

19.1.5 the Surety has a material interest in securing the indebtedness covered by this suretyship.

19.2 If there shall be any breach of the terms of the warranties in 19.1.1 to 19.1.3 inclusive, the Surety shall be deemed, at the option of the Creditor, to have hereby assumed the liability or obligation to the Creditor which any such contract purported to impose upon the Debtor.

19.3 The Surety hereby indemnifies and holds the Creditor harmless against any damage or loss of whatsoever nature which the Creditor may sustain arising out of or in connection with the enforcement, suspension, cancellation or invalidity for any reason of any obligation of the Debtor to the Creditor.

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20 Waiver of presentment

The Surety hereby waives presentment, notice of dishonour and protest of any promissory note, bill of exchange, cheque or other negotiable instrument made, drawn, accepted, endorsed or discounted by the Debtor, the Surety or any other surety, or to be so made, drawn, accepted, endorsed or discounted by the Debtor, the Surety or any other surety, hereby agreeing and admitting that the liability of the Surety hereunder in respect of any such instrument shall not be in any way affected by any failure to present, give notice of dishonour or protest.

21 Consent to jurisdiction

21.1 In terms of section 45 of the Magistrates' Courts Act 32 of 1944, the Surety hereby consents to the jurisdiction of the Magistrate's Court otherwise having jurisdiction in respect of any action to be instituted against the Surety by the Creditor in terms hereof.

21.2 It shall nevertheless be entirely within the discretion of the Creditor as to whether to proceed against the Surety in such Magistrate's Court or any other court having jurisdiction.

22 Obligation to pay

22.1 If any dispute arises between the Debtor and the Creditor and the Debtor contends that the debt is not due and owing, then the Surety:

22.1.1 will accept the written contention of the Creditor that such debt is due and owing; and

22.1.2 hereby waives any defence or contention which the Debtor may raise; and

22.1.3 will pay the amount claimed forthwith.

22.2 The Creditor shall repay to the Surety the said sum or sums to the extent that a court of competent jurisdiction (including any appeal court) finally determines that the contentions of the Debtor are correct.

22.3 The aforesaid sum or sums shall be repaid free of interest up to the date of final judgment.

23 Interest

23.1 Any sum due by the Surety shall carry interest reckoned from the date on which such sum became owing by the Debtor or interest bearing whichever is the later at the rate at which the Debtor is obliged to pay interest by agreement.

23.2 Failing agreement as to the rate of interest to be paid by the Debtor, the Surety undertakes to pay interest on any sum due to the Creditor at the publicly quoted prime overdraft rate of ABSA Bank calculated daily on the amount outstanding from time to time and capitalised monthly.

23.3 A certificate by any manager of ABSA Bank shall be *prima facie* proof of the prime overdraft rate from time to time and it shall not be necessary to prove such signature or the capacity of the manager.

23.4 Prime overdraft rate shall mean the publicly quoted rate of interest charged by ABSA Bank to its corporate customers in the private sector for overdrafts of an equivalent amount.

24 Costs

The Surety shall be responsible for all charges and expenses of whatsoever nature incurred by the Creditor in securing the implementation of the obligations of the Surety hereunder, or of the rights of the Creditor in terms hereof, including, without limitation by virtue of the aforegoing, all legal costs, including attorney and client costs, collection commissions and tracing agents fees.

25 Waiver of benefits

25.1 The Surety waives and renounces:

25.1.1 any right to claim an accounting from the Creditor;

25.1.2 any benefits which the Surety as surety is entitled to in law, without detracting from the generality of the aforegoing, including the benefits of:

25.1.2.1 excussion;

25.1.2.2 division;

25.1.2.3 cession of action;

25.1.2.4 *de duobus vel pluribus reis debendi.*

25.2 The Surety acknowledges that it knows and understands the meaning and full force and effect of such benefits.

26 Election for action

If there are two or more Sureties the Creditor shall be entitled to sue any Surety it elects and no other Surety may join in such action without the consent in writing of the Creditor.

27 Severability

27.1 It is agreed that each surety given, each paragraph, each clause and each subclause in this surety is severable, the one from the other.

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27.2 If any surety, paragraph, clause or subclause is found to be defective or unenforceable for any reason by any competent court, the remaining clauses, sureties, paragraphs and subparagraphs shall be and shall continue to be of full force and effect.

28 Formalities complied with

The Surety acknowledges that:

28.1 this suretyship was completed in all respects when the Surety signed it;

28.2 the rights and obligations of the various Creditors, Debtors and Sureties have been incorporated into one document for convenience only and the failure of any Surety or Debtor:

28.2.1 to execute this suretyship notwithstanding that such Surety or Debtor is reflected herein as a party;

28.2.2 to be bound by this suretyship for any reason after execution;

shall not vitiate, diminish or affect the obligations of any other Surety or the rights of the Creditor, it being agreed that the liability of the Surety is not dependent, wholly or in part on the liability of any other Surety or intended Surety.

29 Domicilium

For the purposes of this suretyship, including the giving of any notice required or permitted hereunder, and any proceedings which may be instituted by virtue hereof, the Surety hereby chooses *domicilium citandi et executandi* at the address as recorded in clause 1.2 of this agreement.

30 Schedule of prior cessions

_____

_____

_____

_____

(*State date, nature and amount owing in each case*).

SIGNED at (*place*) on this (*day, month, year*)

Witnesses:

1 .....

2 .....

(*Signatures, names and addresses of witnesses*)

.....

Surety

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