

DEED OF SURETYSHIP

1. I/We, the undersigned

NAME AND ID.

("the sureties) its successors in title and assigns, hereby bind ourselves jointly and severally to:

**RESILIENT PROPERTIES (PTY) LTD,
MOGWELE TRADING 278 (PTY) LTD,
CHANGING TIDES 91 (PTY) LTD
and RETRACTION PROPS 7 (PTY) LTD**

("the Creditor")

its successors in title and assigns, as surety for and co-principal debtor with:

**NAME OFF CC PTY
(ID Nr. / REG NR)**

("the Principal Debtor")

in respect of any obligations relating to the Tenant's occupancy of the premises, being Shop No. XX in the property known as HIGHVELD MALL as well as in respect of obligations emanating from the agreement of lease or its cancellation, to which this suretyship is annexed.

for

- 1.1 the payment by the Principal Debtor of all moneys which are due or may become due and owing from time to time by the Principal Debtor to the Creditor in terms of or arising out of the enforcement, breach or cancellation (including cancellation by the Principal Debtor's trustee, liquidator or judicial manager, whether provisional or final, pursuant to any power conferred by statute or order of court) of an Agreement of Lease entered into between the Creditor and the Principal Debtor;
- 1.2 the due and faithful performance by the Principal Debtor of all the Principal Debtor's obligations of every nature which the Principal Debtor may now or in the future be obliged to perform under that Agreement of Lease;
- 1.3 the payment of all charges and expenses of whatsoever nature, including, without derogating from the generality of the foregoing, attorney and own client legal costs, stamp duty and collection commission incurred by the Creditor in securing or endeavouring to secure fulfillment of 1.1 and 1.2 as well as my/our obligations hereunder;
- 1.4 the payment of further sums for interest on any outstanding amount, costs and charges which may accrue or become due and payable from time to time howsoever arising. The sum due for payment by the Debtor at the

prevailing Nedbank prime overdraft rate per annum plus 5% (five per centum) calculated on the amount outstanding from time to time.

2. My/our liability hereunder shall in no way be affected or diminished if the Creditor, either now or in the future, obtains additional suretyships, guarantees or securities, whether real or personal, in respect of the debts and/or obligations of the Principal Debtor.
3. This suretyship and undertaking shall be a continuing covering security for any present or future indebtedness of the Principal Debtor to the Creditor under the Agreement of Lease referred to in 1.1 and shall remain in full force and effect, notwithstanding any fluctuation or any intermediate settlement or even the temporary extinction, of such indebtedness. This Deed of Suretyship cannot be revoked before the Agreement of Lease aforesaid or any renewal thereof expires or is terminated by agreement and shall remain in full force and effect until:
 - 3.1 all moneys owing by the Principal Debtor to the Creditor in terms of the said Agreement, or its renewal, or as a result of its termination or cancellation, or as a result of its breach, have been paid;
 - 3.2 all other obligations of the Principal Debtor under or arising from the said Agreement or its renewal, have been fulfilled.
4. The Creditor shall be entitled, without reference or notification to me/us and without effecting its rights hereunder, and without releasing me/us hereunder, to take whatever steps it deems fit against the Principal Debtor to release other securities and/or sureties and/or grant the Principal Debtor extensions of time for payment and/or to compound or make any other arrangements with the Principal Debtor for the discharge of the Principal Debtor's indebtedness. Any leniency or extension of time which may be granted to the Principal Debtor, or a variation or alteration of the said Lease or future agreement between the Principal Debtor and the Creditor shall not be construed as a waiver of the Creditor's rights or claims against me/us hereunder or as a novation of any claim, and shall in no way release me/us from my/our liability hereunder.
5. In the event of the Principal Debtor being placed under liquidation/judicial management/sequestration, liquidation/winding up order (whether provisionally, finally, compulsorily or voluntarily), the Creditor shall be entitled to accept any dividend on account and in reduction of the Principal Debtor's indebtedness without prejudice to its rights against me/us, which rights shall further not be prejudiced by its acceptance of any other securities, guarantees or suretyships arising out of such liquidation/judicial management/sequestration, liquidation/winding up or by its acceptance of any offer of compromise made by or on behalf of the Principal Debtor, whether than in liquidation/judicial management/winding up/sequestration or otherwise.
6. I/we do hereby cede, assign, transfer and make over unto and in favour of the Creditor all my/our right, title and interest in and to all amounts which are now or may hereafter become owing to me/us by the Debtor from any cause of indebtedness whatsoever, but to the limit of my/our liability to the Creditor under this suretyship.
7. This suretyship shall remain binding on the other or others of us notwithstanding the death, insolvency or any other legal disability of any one or more of us and notwithstanding that it may not have been executed by any one or more of us, that it may for any other reason not be or cease to be binding in whole or in part on any one or more of us.
8. I/we hereby agree and declare that all acknowledgements of indebtedness and admissions by the Principal Debtor and/or any co-surety to the Creditor relative to the Principal Debt shall be binding on me/us.
9. A certificate under the hand of any director of the Creditor as to the existence and amount of the indebtedness of the Principal Debtor and of myself/ourselves to the Creditor at any time as to the fact that such amount is due and payable, the amount of interest accrued thereon and the rate of interest applicable thereto and as to any other fact, matter or thing relating to the indebtedness of the Principal Debtor and myself/ourselves to the Creditor shall be prima facie proof of the contents and correctness thereof and of the amount of my/our indebtedness hereunder for the purpose of provisional sentence of summary judgment (and shall be valid as a liquid document for those

purposes) or any other proceedings against me/us in any competent court. It shall not be necessary to prove the appointment of the person signing such certificate and such certificate shall be prima facie binding upon me/us and shall be deemed to be sufficient particularly for the purposes of pleading or trial in any action or other proceedings instituted by the Creditor against me/us until such time as the contrary is proved.

The onus shall rest with me/us to prove that the amount reflected in the certificate is not owing and/or due and unpaid.

10. I/we hereby renounce the benefits of the legal exceptions "non causa debiti", "errore calculi", "excussionis et divisionis", "de duobus vel pluribus reis debendi", "no value received" and "revision of accounts" with the meaning and effect of all of which I/we declare myself/ourselves to be fully acquainted and I/we declare that this suretyship now or hereafter to be held from the Principal Debtor.
11. It is agreed that each paragraph in this suretyship is severable, the one from the other, and if any paragraph or clause is found to be defective or unenforceable for any reason by any competent court, the remaining clauses shall be of full force and effect and continue to be of full force and effect.
12. I/we do hereby waive presentment, notice of dishonour and protest of any promissory note, bill of exchange or other negotiable instruments made, drawn, accepted, endorsed or discounted, agreeing and admitting that liability under any such instrument shall continue to exist, notwithstanding failure of presentation, notice of dishonour or protest.
13. This suretyship shall be of full force and effect and binding on any signatory hereto, whether or not ex facie hereof, it is contemplated that any additional party would execute this document as well.
14. I/we acknowledge that in the event of the Principal Debtor being a company or a close corporation and converting from a company to a close corporation, or from a close corporation to a company, or at any time thereafter converting to either a company or a close corporation, as the case may be, I/we shall still remain bound under this suretyship.
15. I/we record that this suretyship was at the date of signature by me/us complete in all respects.
16. In the event of any surety hereto being a natural person, he warrants that he is married out of community of property, or that if married in community of property, his spouse has consented in writing hereto as required by the Matrimonial Property Act 1984.
17. For the purpose of this suretyship, the singular shall include the plural and vice versa, the one gender shall include the other gender and a natural person shall include an artificial person and vice versa.
18. It is a specific and irrevocable condition hereof that the Creditor shall be entitled, in its sole and absolute discretion, at any time to cede the whole or any portion of any claim it may have against me/us. Such cession may be effected without any prior notice to me/us.
19. I/we hereby agree and consent that the Creditor shall, at its option, be entitled to institute any legal proceedings which may arise out of or in connection with this Deed of Suretyship in any Magistrate's Court having jurisdiction, notwithstanding the fact that the claim or value of the matter in dispute might exceed the jurisdiction of such Magistrate's Court. It shall be entirely within the Creditor's discretion as to whether to proceed against me/us in such Magistrate's Court or any other Court having jurisdiction.
20. I/we hereby choose domicilium citandi and executandi at the address of the leased premises or at the Creditor's option, the address set out below, at which address all notices and communications may be addressed to me/us and all notices addressed to me/us at the said address and despatched by prepaid, registered post shall be deemed to have reached me/us after the date of posting:

