

**DEED OF SURETYSHIP AND CO-PRINCIPAL
DEBTOR**

1 ACKNOWLEDGEMENT

I, the undersigned,

.....

Identity number:

under renunciation of the benefits of the legal exceptions *ordinis seu excussionis et divisionis* (that the creditor must proceed against the principal debtor first), *de duobus vel pluribus reis debendi* (that the parties shall be jointly and severally liable), *Beneficium Divisionis* (apportionment of liability between sureties), no value received and "cession of action" with the full force and effect whereof I acknowledge myself to be fully acquainted, do hereby bind myself as surety and co-principal debtor in solidum, to and in favour of :

PERMIDAS EIENDOMME 6 cc t/a BASIC FOODS

REGISTRATION NO: 99/004244/23

its successors in title and assigns

("The Creditor")

for the payment on demand of all sums of money, and/or for the due and punctual performance of all obligations, howsoever arising, which :-

.....

(hereinafter referred to as the "DEBTORS") may now and from time to time hereafter owe or be indebted unto the **creditor** from whatsoever cause arising, together with any interest and/or other charges and costs (including Attorney and one's own client costs) which the **debtors** may be or may become liable from time to time to pay the **creditor**, or perform, whether such indebtedness or obligations be incurred by the **debtors** solely, or jointly, or jointly and severally, or in partnership, or otherwise with any other

person or persons, or howsoever incurred by the **debtors**, Company or Companies, I agree as set forth hereunder.

2 **SOLE DISCRETION OF CREDITOR**

- 2.1 The creditor shall in its sole discretion be entitled always :-
- 2.2 to determine the extent, nature and duration of the facilities (if any) to be allowed to the debtors;
- 2.3 be at liberty to (in whole or in part) release, compromise, reduce, waive or abandon securities, or other sureties for the debtors, or to grant any indulgence or extension of time to, or compound or make other arrangements with the debtors or myself, or any ther surety or sureties for the debtors, and no such action on the part of the creditor shall in any way effect or be construed or operate as a waiver, compromise or abandonment of any of the creditor's rights or claims against me in terms of this Suretyship, nor in any way whatsoever, prejudice or compromise the full extent of the creditor's rights against me.

3 **ACKNOWLEDGEMENTS BY DEBTORS BINDING ON ME**

All and any acknowledgements and/or admissions by the debtors, made personally or on its behalf, and anything relating thereto, shall be binding upon me as though I had made the admissions and acknowledgements concerned.

4 **INSOLVENCY OF DEBTORS**

In the event of the insolvency, liquidation or sequestration, provisional or final, assignment, surrender or placing under judicial management of the estate of the debtors, or in the event of a compromise between the debtors and any creditor of the debtors, I undertake and agree :-

- 4.1 not to prove a claim against the debtor's estate for any amount I may be called upon to pay under this Suretyship, until all amounts (including interest and legal costs) due by the debtors to the creditor have been paid in full;

- 4.2 that notwithstanding any part payment by or on behalf of myself to the creditor, I shall have no right to any cession of action in respect of such part payments, and shall not be entitled to take any action against the debtors or against any other surety for the debtors in respect thereof, unless and until the creditor shall have been paid all amounts due to it in full;
- 4.3 that any dividend received by the creditor from the debtors in respect of the creditor's claims against the debtors shall be appropriated firstly to the payment of that part (if any) of the debtor's indebtedness to the creditor which is not covered by this Suretyship, thereafter legal costs incurred by the creditor against me in terms of Clause 24 hereof, thereafter interest, and thereafter the capital amount;
- 4.4 no dividends or payments which the creditor will receive from the debtors or any other surety or sureties or from myself shall prejudice the creditor's rights to recover from me to the full extent of this Suretyship, any sum which, after the receipt of such dividends or payments, will remain owing to the creditor by the debtors but nothing herein contained will be deemed to limit the renunciation by me of the legal benefits and exceptions referred to herein;
- 4.5 I agree that the creditor shall be entitled without prejudicing its rights against me –
- 4.5.1 to prove a claim against the debtor's Estate for the full amount of the indebtedness of the debtors to the creditor, and simultaneously or prior or subsequent thereto; and
- 4.5.2 to claim from me the full amount of my indebtedness hereunder.

5 **APPROPRIATION OF MONIES**

- 5.1 Subject to the matters referred to in Clauses 5.2 and 5.3 hereunder, all payment made by me pursuant hereto shall, in the first instance be appropriated towards collection commission, (where and if applicable) then legal costs incurred in

terms of Clause 21 (when and if applicable), then interest and thereafter the capital.

5.2 Notwithstanding the provisions of Clause 5.1 above, I agree that the creditor shall be entitled to appropriate any monies received by it from me, whether directly or indirectly, to any cause of indebtedness due and owing by me to the creditor, whether in relation to this Suretyship or otherwise, irrespective as to the provisions of Clause 5.3 hereunder, or any appropriation or allocation (or purported appropriation or allocation) which I may make.

5.3 Notwithstanding any appropriation or allocation by the creditor concerned, whether such appropriation is disclosed to me or not, whether such appropriation is reflected in the creditor's financial statements as having been made or not, the creditor shall be entitled, provided notice thereof is given to me, to re-allocate the appropriation, provided the re-allocation is effected within 12 (Twelve) months of the first appropriation or allocation, and provided further that such re-appropriation or re-allocation does not :-

5.3.1 cause me additional financial exposure; or

5.3.2 allow the creditor to contend that I have, because of the re-allocation or re-appropriation, breached the agreement concerned.

6 ***APPLICABILITY OF SURETYSHIP***

Without prejudice to anything hereinbefore contained, this Suretyship shall apply to and cover the creditor in respect of claims of any nature whatsoever which the creditor may have acquired or in future may acquire against the debtor from any party whomsoever or whatsoever, and in any circumstance.

7 ***DURATION OF SURETYSHIP***

This Suretyship shall remain in full force and effect as a continuing covering security, notwithstanding any intermediate or other or final settlement of or fluctuation in or the

temporary or seemingly final extinction of the indebtedness of the debtors to the creditor, whether for the time being or otherwise, and notwithstanding my death or legal disability and shall endure and be of full force or effect until the creditor will have agreed in writing to cancel this Suretyship, which Suretyship is binding on my Estate.

8 **CESSION OF CREDITOR'S CLAIM AGAINST THE DEBTORS**

In the event of the creditor ceding its claim (*or any part or portion thereof*) against the debtors to any third party, then this Suretyship shall be deemed to have been given by me to such person or persons to whom the creditor may cede its claim against the debtors and such cessionary or cessionaries shall be entitled to exercise all or any rights which the creditor has in terms of this Suretyship.

9 **CERTIFICATE BY CREDITOR**

A certificate under the signature of the creditor (*the appointment or qualification or authority of such person signing on behalf of the creditor need not be proved*) as to the amount due and/or owing by the debtors and/or me to the creditor, at any time subsequent to the date I sign this Suretyship, and the due date for payment of such amount, and/or the extent of my obligations hereunder, and/or the computation of the amount due and/or owing by me, shall be –

- 9.1 binding on me and prima facie proof of the amount of my indebtedness hereunder; and
- 9.2 valid and enforceable as a liquid document against me for the purpose of obtaining provisional sentence or Judgment against me.

10 **ACKNOWLEDGEMENT OF BENEFIT BY SURETY**

Acknowledge that I will derive a direct and/or indirect benefit from the cause out of which the indebtedness of the debtors to the creditor arose or will arise and further that this Suretyship and co-principal debtors obligation is assumed voluntarily by me because I believe it will be in my personal interests so to do, but even should all the

aforesaid not be the case (*which it is*) either now, or in the future, this Suretyship and the rights the creditor has hereunder shall not in any way be effected and/or affected.

11 ***DOMICILIUM CITANDI ET EXECUTANDI***

I choose *domicilium citandi et executandi* for all purposes herein at :

..... Email:

12 ***CESSION OF CLAIMS BY SURETY***

12.1 As security for the due payment by me of all my liabilities and obligations to the creditor arising under this Suretyship, and for the due performance of all my obligations arising hereunder, I hereby cede, assign, transfer and make over to the creditor all my right, title and interest in and to all claims of whatsoever nature and howsoever arising (past, present and future), which I may now or in the future have against the debtors, and any other person.

12.2 I undertake to do all such things as are necessary whenever requested so to do by the creditor to enable the creditor to prove any claim against the debtors and any other person for the amount so ceded to the creditor in terms hereof and/or to enable the creditor to calculate the exact amount of such claims, and without limiting the generality of the foregoing, I undertake to make available to the creditor upon being requested so to do, all such books, documents and other vouchers as reflect or prove any portion of my said claims hereby ceded.

12.3 I undertake to deliver to the creditor in writing within 7 (Seven) days of any request, the full names, physical addresses and phone numbers of all persons against whom I have a claim (including the debtors where applicable) and which

are subject to the Cession embodied herein. In addition thereto, such information shall indicate the causa of the claim, when the debt was incurred, and where there are documents evidencing the claim, such documents shall be attached.

12.4 In the event that I have, either prior to signing this document, or more or less simultaneously with signing this document, or at any time after signing this document, cede and/or assign and/or make over unto and in favour of the creditor any right I have against any other person, of the sort referred to in this clause, then and in such event such other cession and/or assignment and/or making over should be read in conjunction with and not contradictory to any of my obligations in terms of this, Clause 12, and should be complementary thereto. In the event however that the two are in any respects incompatible, then and in such event the creditor shall be deemed to have separate rights under each document and/or agreement.

13 ***WARRANTY RE DEBTS BETWEEN CREDITOR AND DEBTORS***

I warrant that all contracts entered into or to be entered into by the debtors with the creditor were or will be at the time of the conclusion thereof within the scope, authority, power and objects of the debtors and that all resolutions of and signatures by the Directors of the debtors were or in the case of future contracts, will be properly and with due authority passed and/or executed and/or made, and that all such contracts are or will be, and will at all times remain valid and legally enforceable. If there shall be any breach of the terms of this warranty, I hereby assume the liability or obligation to the creditor which any such contract purported to impose upon the debtors.

14 ***INDEMNITY***

I hereby indemnify and hold the creditor harmless against any damage and/or prejudice and/or loss of whatsoever nature directly or indirectly which the creditor may sustain out of or in connection with the enforcement, cancellation or invalidity for any reason or any Agreement/s between the creditor and the debtors.

15 ***AMENDMENT AND CANCELLATION***

The terms hereof shall not be capable of being varied or amended by mutual consent, unless reduced to writing and signed by myself as well as the creditor. Any agreement to cancel or vary any obligation that I have, whether in whole or in part, shall be of no force or effect unless reduced to writing and signed by myself and the creditor.

16 **INDULGENCE**

16.1 No indulgence granted to me by the creditor shall be construed as a waiver, compromise or an abandonment of any of its rights (whether in whole or in part), and in particular, no acceptance or depositing, of any cheques issued by me or on my behalf, by the creditor, shall constitute, a waiver, compromise or abandonment of any of the creditor's rights (whether in whole or in part).

16.2 The creditor shall not be capable of, nor shall it be deemed to have waived, compromised or abandoned any right (whether in whole or in part) unless such waiver, compromise or abandonment is reduced to writing and signed by the creditor.

16.3 All and any rights enjoyed by the creditor as a result of any act or omission committed by me, which gives rise to any rights, shall remain intact unfettered and unaltered, notwithstanding that the creditor fails to take any action or enforce any rights pursuant to my acts or omissions, and notwithstanding the passage of any amount of time, and notwithstanding that the creditor does any act, matter or thing which may or would but for the provisions of this, clause 16, have constituted a waiver, compromise or abandonment of the creditor's rights, (whether in whole or in part) or an indulgence or accommodation granted to me, or would have constituted a course of conduct, or an individual act, which would or might have constituted a basis for me to raise, as against the creditor, the issue of estoppel.

16.4 I furthermore acknowledge and record that no act or omission committed by the creditor, in enforcing or not enforcing any of its rights against me, or of enforcing or not enforcing its rights expeditiously, or releasing me from my liability herein (whether in whole or in part) or in proving a claim in my insolvent estate, shall in

any way whatsoever prejudice, compromise or better the creditor's rights to proceed against me, at any stage or time subsequent to the act or omission in question.

17 ***COMPLETENESS AND REGULARITY OF SURETYSHIP***

This Suretyship is complete and regular on the face of it. It has been completed in all respects. I am liable in terms of this surety and co-principal debtors obligation, whether or not any other persons are to sign a similar document, securing the creditor's claim against the debtors, whether simultaneously with my signing this document or otherwise. I acknowledge that I shall not be entitled to avoid liability hereunder, in the event that any other person is to sign as surety and co-principal debtors in favour of the creditor, securing the debtors's obligations, whether together with me or otherwise. To the extent that I have any rights relating thereto, such rights are waived. I intend, by appending my signature hereto, to be bound immediately irrespective as to any other arrangement that may exist in regard to any other surety and co-principal debtors obligation.

18 ***HEADINGS***

The headings are inserted for reference purposes only and do not bear upon the interpretation of any clause.

19 ***UNDERTAKING NOT TO DEAL WITH ASSETS***

I furthermore agree and undertake that I will not in any manner whatsoever dispose of, deal with, hypothecate or encumber any assets owned by me, or in respect of which I have an interest, without the creditor's prior written consent.

20 ***PRIOR ARRANGEMENTS, AGREEMENTS, UNDERSTANDINGS***

20.1 This Suretyship is intended to cancel any prior arrangements, agreements or understandings of any nature whatsoever that may exist between the creditor and me, qua Creditor and surety and co-principal debtors, in regard to any aspect, matter or thing referred to herein.

20.2 This Suretyship shall novate any such prior arrangements, agreements or understandings (if any), qua Creditor and surety and shall be the sole memorial of the creditor's rights and claims against me, qua surety and co-principal debtors.

21 ***WHOLE AGREEMENT***

This Suretyship contains the entire agreement between the parties in regard to what is contained or referred to in this Suretyship. There are no other terms, conditions, undertakings, promises or warranties of any nature whatsoever regulating the parties' relationship in regard to the matters referred to or contained in this Suretyship. There are no collateral agreements between the parties in regard to the matters contained in or referred to in this Suretyship, nor any understandings or assurances, promises or inducement of any nature whatsoever, given by the parties or any other person which motivated the parties, directly, indirectly or otherwise, to sign this document, and assume the obligations and undertakings herein.

22 ***NOTICE***

Any notice to be given by any one party to the other, shall be in writing and shall –

22.1 if delivered by hand be deemed to have been duly received by the addressee on the day following the actual date of delivery; and

22.2 if posted by prepaid registered post be deemed to have been received by the addressee on the eighth day following the date of such posting; and

22.3 if given by email, be deemed to have been received by the addressee on the day following the day of dispatch; and

23 ***LEGAL COSTS IN THE EVENT THAT ACTION IS INSTITUTED BY THE CREDITOR***

- 23.1 I agree and undertake that in the event that the creditor is entitled to institute legal proceedings against me, then and in such event any order for costs which the creditor shall procure, shall be costs on the attorney and own client scale, for which level of costs, I acknowledge myself liable.
- 23.2 The provisions of this clause shall apply mutatis mutandis where proceedings are not instituted, but where the creditor determines to instruct attorneys, and thereby incurs liability as between attorney and one's own client, which instructions relate to me and any aspect, matter or thing relevant to the creditor's claim against me, and in respect of which the creditor requires or desires legal advice and/or guidance.
- 23.3 In making payment of the creditor's Attorney and one's own client legal cost, my obligation shall commence from the date when the creditor first instructed Attorneys, notwithstanding that proceedings might or might not be instituted subsequent thereto.

24 **SEVERABILITY AND DIVISIBILITY**

Each and every provision and/or clause embodied in this Suretyship and/or obligation and/or right by any one party to the other flowing from this Suretyship, is hereby declared to be severable and divisible from each other. Accordingly, but without limiting the consequences or effect of the foregoing, in the event that anyone or more of the clauses and/or provisions and/or rights and/or obligations, contained in this Suretyship is found or declared to be invalid or unenforceable, for whatever reason, then and in such event such invalidity and/or unenforceability shall in no way whatsoever affect and/or effect and/or detract from, and/or limit, and/or inhibit, and/or derogate from, the enforceability and/or validity of the remaining clauses and/or provisions of this Suretyship, and/or the rights and/or obligations of any party under this Suretyship.

25 **SECURITY FOR LEGAL COSTS**

I do irrevocably waive and abandon any right that I may have, to call upon the creditor, in any litigation or other proceedings, to furnish security for costs, whether such right is embodied in the Companies Act No. 61 of 1973 (*as amended*), or the Magistrate's

Court Act No. 32 of 1944 (*as amended*), or the Supreme Court Act No. 59 of 1959 (*as amended*), or Rules promulgated pursuant to or in connection with any of the aforesaid Acts.

26 **LEGAL ADVICE**

I conclude this Suretyship as a result of my own views and thoughts in the matter, freely and voluntarily, and because I am satisfied that it is fair and accurate. I have been invited, and urged prior to signing this document, to procure independent legal advice.

27 **PLACE FOR PERFORMANCE**

I acknowledge that all performances due by me in terms of this Suretyship shall be effected in Cape Town.

THUS DONE AND SIGNED by the parties at the placed and on the dates reflected beneath their signatures.

AS WITNESSES :

1 _____

.....
DATE:.....
PLACE:.....

If married ICOP- Consent of spouse required