

DATED THE DAY OF 1997

DEED OF GUARANTEE

SIMPLE SIMON and DESPERATE DAN

TO

BANK OF KENYA LIMITED

Drawn By: -

Spick, Span & Co.
Advocates
Hazina Towers,
19th floor
P O BOX 12345
NAIROBI.

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 1997 **BETWEEN SIMPLE**
SIMON and **DESPERATE DAN** both of Post Office Box Number 12345, Nairobi in

the Republic of Kenya (hereinafter jointly referred to as "the **Guarantors**" which expression shall where the context so admits include their personal representatives and assigns) of the one part and BANK OF KENYA LIMITED a company incorporated in the said Republic and having its registered office at Bank Building, Harambee Avenue, Post Office Box Number 98765, Nairobi, in the said Republic (hereinafter referred to as "**BK**" which expression shall where the context so admits include its successors in business and assigns) of the other part.

WHEREAS: -

(A) By a Loan Agreement dated the _____ day of _____ 1997 (hereinafter referred to as "**the Loan Agreement**") and made between BK and SAFARI PARK LIMITED a Company incorporated in the said Republic and having its registered office at Nairobi Post Office Box Number 43210, Nairobi in the said Republic (hereinafter referred to as "**the Borrower**") BK has agreed to make available to the Borrower a Loan of United States Dollars Seven Hundred and Ninety Four Thousand Two Hundred and Forty Eight Point Zero Seven (U.S.\$ 794,248.07) (hereinafter referred to as "**the Loan**" which expression and conditions, inter alia, that the Guarantors herein furnish to BK a guarantee for the repayment of the loan, interest thereon and all other moneys payable thereunder.

The Guarantors in consideration of BK granting the Borrower the Loan have agreed to guarantee to BK the payment of the Loan and interest thereon and all other moneys to become due and payable to BK.

NOW in pursuance of the said agreement and in consideration of the premises **THIS DEED OF GUARANTEE WITNESSETH** as follows: -

The Guarantors hereby unconditionally guarantee as primary obligors and not merely as sureties the due and punctual repayment of the Loan and payment of interest thereon and of all other charges related thereto AND if and when the Borrower shall make default of payments of such amounts the Guarantors shall pay the amount thereof on demand in writing therefore by BK.

The liability of the Guarantors under this Guarantee shall not be impaired or discharged by reason of any time or other indulgence granted by or with the

consent of BK to the Borrower or by reason of any arrangement entered into or composition accepted by BK modifying (by operation of law or otherwise) its rights and remedies under the Loan Agreement or any security granted to BK by the Borrower.

The Guarantors agree as a separate and independent stipulation that any sum of money intended to be subject to this guarantee which may not be recoverable from the Borrower by reason of any legal limitation, disability or incapacity on or of the Borrower or any other fact or circumstances whatsoever and whether or not known to the Guarantors, shall nevertheless be recoverable from the Guarantors as sole or principal debtor in respect thereof and shall be repaid to BK by the Guarantors on demand.

If the Borrower shall become insolvent or go into liquidation or enter into a composition with its creditors BK shall be at liberty to prove for the whole of the moneys owing to it in priority to any right of proof on the part of the Guarantors and to accept any composition as if the Guarantors had not entered into this Guarantee and to appropriate any dividends or other payments in reduction of any indebtedness of the Borrower in priority to any claim by the Guarantors and this Guarantee shall apply to and secure any ultimate balance which shall remain unpaid to BK.

This Guarantee is a continuing security for the whole amount due and owing to BK or which may hereafter at any time become due and owing to BK aforesaid by the Borrower in respect of the Loan and interest and other sums payable under the Loan Agreement and shall remain in full force and effect notwithstanding any charge in the constitution of the Borrower and/or the Guarantors.

Until BK has been paid all moneys to which this Guarantee shall extend the Guarantors will take no steps to enforce any right or claim against the Borrower for any reimbursement in respect of moneys paid by the Guarantors to BK hereunder.

For all purposes of the Guarantors' liability to BK under this Guarantee (including in particular but without prejudice to the generality of the foregoing for all purposes the Guarantors liability for interest) every sum of money which may

now be or which may hereafter from time to time become due and owing to BK aforesaid by the Borrower shall be deemed to continue to be due and owing to BK by the Borrower until the same shall be actually repaid to BK notwithstanding the insolvency or winding up of the Borrower or any other event whatsoever.

This Guarantee is to be in addition to and without prejudice to any other securities or guarantees which BK may now or hereafter hold from or on account of the Borrower or the Guarantors.

In the event of the Borrower going into liquidation or being wound up or reconstructed or making any arrangements with its creditors any dividends or payments which BK may receive from the Borrower or any other person

shall be taken and applied as payments in gross and shall not prejudice the right of BK to recover from the Guarantors to the full extent of this Guarantee the ultimate balance which after the receipt of such dividends or payment may remain owing to BK by the Borrower.

In the event of the insolvency and winding up of the Borrower BK is at liberty (notwithstanding payment to BK by the Guarantors or any other persons of the whole or any part of the amount hereby guaranteed or any release settlement discharge or arrangement made or given by BK) to rank as a creditor and prove in the Borrower's liquidation for the full amount of BK's claim and BK may and shall receive and retain the whole of the dividend to the exclusive of the Guarantors' rights (if any) as the Guarantors in competition with BK until BK's claim is fully satisfied.

No assurance security or payment which may be avoided under any enactment for the time being in force relating to the winding-up, insolvency or liquidation of the Borrower and no release settlement discharge or arrangement which may have been given or made on the faith of such assurance security or payment shall prejudice or affect BK's right to recover from the Guarantors to the full extent of this Guarantee as if such assurance security payment release settlement discharge or arrangement (as the case may be) had never been granted given or made and any such release settlement discharge or arrangement shall as between BK and the Guarantors be deemed to have been given or made upon the express

condition that it shall become and be wholly void and of no effect if the assurance security or payment on the faith of which it was made or given shall at any time thereafter be avoided under any enactment relating to winding-up, insolvency or liquidation of the Borrower to the extent and so that BK shall become and be entitled at any time of such avoidance to exercise all or any of the rights in this Guarantee expressly conferred upon BK and/or any other rights which by virtue of and as a consequence of this

Guarantee BK would have been entitled to exercise but for such release settlement discharge or arrangement.

This Guarantee shall continue to bind the Guarantors notwithstanding any amalgamation or reconstruction that may be effected by BK with any other company or person or any transfer of BK'S business or any part thereof or any change in BK's constitution and shall enure additionally for the benefit of any company or corporation or person for the time being carrying on BK's business or any part thereof as successor to BK whether such company or corporation shall or shall not differ in its name objects charter and constitution from BK it being the intent that this Guarantee shall remain valid and effectual in all respects and for all purposes in favour of and with reference to any company or corporation or person or either BK's successors or assigns as well as BK and may be proceeded on and enforced in the same manner to all intents and purposes as if such company or corporation or person or either BK's successors or assigns have been expressly named and referred to herein instead of BK.

Any admission in writing by the Borrower or any person on behalf of the Borrower of the amount of the indebtedness of the Borrower in relation to the subject matter of this Guarantee or any judgement or award obtained by BK against the Borrower or proof by BK in liquidation of the Borrower which is admitted or any accurate statement of account furnished by BK the correctness of which is certified by any one of the Directors or Officers of BK shall be binding and conclusive on the Guarantors.

No payment under this Guarantee made by the Guarantors or any other person shall give the Guarantors, the Borrower or any other person any right of set-off or counterclaim against BK and this Guarantee shall remain free of any set-off or

counterclaim whatsoever.

In the event any of the Guarantors herein wishes to determine this Guarantee he shall give BK at least three (3) months notice in writing of his intention to do so.

In the event of this Guarantee being determined either by notice by the undersigned or by demand in writing by BK it shall be lawful for BK to continue the account with the Principal notwithstanding such determination by the undersigned for the amount due from the Principal at the date upon which such determination of this Guarantee shall become operative and of effect notwithstanding any subsequent payment into or out of the account by or on behalf of the Principal.

In case of death of any of the Guarantors herein, knowledge of such death on the part of BK or notice thereof shall not by itself determine this Guarantee. The personal representative/s of any Guarantor who dies shall give at least three (3) months notice in writing of such death to BK for determination of this guarantee to take effect.

In case of death of each or both the undersigned and pending Probate of his/their will or Grant of Administration in respect of his/their estate any demand sent by post as aforesaid addressed to him/them at his/their last known address or to his/their address (es) as stated hereon shall for all purposes of this Guarantee be deemed a sufficient demand by BK upon him/them and his/their executors or administrators and shall be as effectual as if he/they were still living.

This Guarantee shall be joint as well as several and discharge or release of any one Guarantor under this Guarantee or any other Guarantee shall not be a discharge or release of the other or any other Guarantor.

Every and any demand of money under this Guarantee by or on behalf of BK shall be made in writing and shall be sufficiently served if it be sent by registered

post in a stamped envelope addressed to the Guarantors or the Borrower at their or its last known postal address in Kenya AND THAT proof of posting shall be proof of service.

This Guarantee shall be governed by the Laws of Kenya.

IN WITNESS WHEREOF this Deed has been duly executed by the parties hereto the day and year first above written.

SIGNED SEALED AND DELIVERED BY }
The said SIMPLE SIMON }
In the presence of: - }
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SIGNED SEALED AND DELIVERED BY }
The said DESPERATE DAN }
In the presence of: - }
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SIGNED BY }
The duly constituted Attorney of }
BANK OF KENYA LIMITED }
Under and by virtue of a Power of Attorney }
Registered as No. }
In the presence of: - } ATTORNEY