



AMERICAN
BANKRUPTCY
INSTITUTE

Distressed Real Estate Symposium

Guarantees

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ABI PROGRAM GUARANTEE MATERIALS

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Lenders may resort to judicial foreclosure in order to make a full recovery of a defaulted loan. This however requires the lender to make significant expenditures of time and money that are likely to end with a reduced value of the foreclosed property. Borrowers also may have a right of redemption. As a result of the difficulties associated with judicial foreclosure, the road to remedies more often traveled by real estate-secured lenders is exercise of the private power of sale contained in a mortgage or deed of trust, culminating in a sale of the property collateral. This private, nonjudicial foreclosure process can result in an expedited foreclosure sale, which is inexpensive in comparison to a lawsuit for judicial foreclosure. Moreover when the foreclosure sale takes place, it is typically final, and there is no statutory right of redemption. But this efficiency and finality come at a cost: anti-deficiency rules in many states provide that the lender has no right, following the non-judicial foreclosure sale, to obtain a deficiency judgment against the borrower.

There are generally two reasons why a real property secured lender may require a guaranty in connection with a real property secured loan. The first and most obvious is the lender's desire for an alternative source of repayment of its loan. This is frequently the case where the borrower either lacks adequate financial strength to carry the loan on its own or, due to anti-deficiency protections, the lender is precluded from gaining access to the borrower's general creditworthiness.

Another less obvious reason is the lender's need to have the principals of the borrower committed to the success of the project and the repayment of the loan. Thus, even where the guarantor adds little in the way of additional credit to support the loan, the lender can gain comfort from the fact that the guarantor is wholly committed to the project's success.

There are several forms of guarantees that real estate secured lenders often employ:

Full Loan Liability Carveouts

Lenders whose loans are secured with real estate have special reasons to use payment and performance recovery guaranties. In states with strong anti-deficiency laws (such California, Utah, Nevada, Montana, Idaho), real estate-secured lenders cannot sue directly upon a promissory note to recover the debt without jeopardizing their rights with respect to the real property collateral. If the lender wants to recover a monetary award directly from the borrower, the lender must run the gauntlet of anti-deficiency and one-form-of-action rules.

GUARANTEES

-1-

The effect of the one-form-of-action rule is that, when a lender's loan is secured by a deed of trust on real property, the only action a lender can properly bring to collect on the loan from a borrower is one for recovery of the debt that includes a count for a court-supervised foreclosure of the deed of trust. Judicial foreclosure involves a full-blown lawsuit, which time-consuming and expensive for a lender to pursue.

Depending on the negotiations between the guarantor and lender, a guarantor sometimes assumes full loan liability for the entire loan in certain cases. Full loan liability could arise, for example, if the borrower:

- Conveys the property in violation of transfer restrictions in the loan documents;
- Obtains secondary financing in violation of the loan documents;
- Files voluntary bankruptcy (or, later, colludes with an involuntary bankruptcy filing);
- Defaults under a ground lease securing the loan;
- Claims a partnership between borrower and lender (or make any other claim inconsistent with the separateness representations the borrower acknowledged to be true in the loan agreement);
- Breaches covenants intended to assure the borrower remains a special purpose entity.

Full loan liability carveouts are traditionally reserved for egregious acts or acts that pose significant risks to a lender's ability to recoup its losses through foreclosure.

Nonrecourse Carveout Guaranty

In the 1980s, nonrecourse carveouts were few and straightforward. They carved out from nonrecourse treatment only a handful of matters, such as: fraud, misapplication of insurance proceeds or condemnation awards, "waste" of the mortgaged property, and environmental matters.

Over time, nonrecourse carveouts became far more complicated and extensive than the short list summarized above. The intricacies of modern nonrecourse carveouts have sometimes produced results that the parties to the original transactions never anticipated.

In response, when commercial real estate financing began its cyclical recovery in the middle of the 1990s, lenders started to revisit and rethink their nonrecourse clauses in light of lessons learned from the loan defaults of the early 1990s. As nonrecourse carveouts developed further in the mid-1990s, they:

- Went beyond making the borrower liable for the carveouts, but also started to require guaranties of the carveouts from the principals;
- Expanded from loss liability, where the guarantor faced personal liability only for the lender's actual losses suffered, and moved toward full loan liability, where the guarantor faced full liability for the entire loan if certain bad events occurred.

Most permanent loans today are structured as nonrecourse debt. In a nonrecourse loan, the lender agrees to limit enforcement of the loan to foreclosure of the property, subject to certain nonrecourse carveout exceptions. Guaranties are particularly important in nonrecourse lending because the borrower is formed as a special purpose entity prohibited from owning any

GUARANTEES

-2-

assets or engaging in any business other than the ownership, management, and operation of the mortgaged real property. Since the borrower generates no other income other than rental income, guaranties give lenders some protection for borrowers' bad acts.

If a nonrecourse carveout event occurs, the lender can recover for either:

- Partial loss liability in which the lender's actual losses are quantified;
- Full loss liability in which the lender can recover the entire remaining balance of the loan.

Depending on the negotiations, loan documents in the late 1990s started to include a long list of bad acts that could trigger loss liability carveouts. Today these "bad acts" included the borrower's failure to:

- Deliver books and records to the lender after foreclosure;
- Pay brokerage commissions, closing costs, or commitment fees;
- Comply with laws, such as the Americans with Disabilities Act of 1990 and ERISA;
- Reimburse the lender for costs of successfully enforcing the loan after default, including any transfer taxes;
- Pay insurance premiums;
- Pay yield maintenance payments;
- Pay mechanics liens;
- Apply rental income first to pay property expenses and debt service;
- Maintain security deposits in trust;
- Repair (and sometimes even maintain) the property;
- Pay real estate taxes;
- Comply with leasing restrictions;
- Violation of the transfer provisions in the loan documents that prohibit certain transfers regarding the borrowing entity and the property.
- Environmental liability.

Principal Payment Guaranty

Under a principal payment guaranty, the guarantor guarantees the timely payment of all or some portion of the principal amount of the loan as it become due, including installments of principal debt service and a maturity date balloon payment.

Mortgage lenders may require additional security in the form of a principal payment guaranty to protect against risks, including that:

- The borrower may not complete the construction, renovation, redevelopment of the project on time, lien-free, and in accordance with the approved project plans;
- The property value or income stream (either before or after completion of the construction, redevelopment, or other project) may be insufficient to repay or refinance the loan at maturity such as when:
 - the real estate market suddenly declines or has not recovered from a recent decline;
 - the real property is not leased-up in accordance with the original leasing plan; or

GUARANTEES

-3-

- the borrower defaults.

Limited Principal Payment Guaranties

In a limited principal payment guaranty, the guarantor's liability is capped at a maximum amount or percentage of the principal amount of the loan.

A common issue that arises when using a limited principal payment guaranty is whether the lender must apply the proceeds of a foreclosure sale to reduce guarantor liability under the limited principal payment guaranty. Most limited principal payment guaranties include language expressly requiring foreclosure proceeds or other payments received in repayment of the loan to be applied first to the non-guaranteed portion of the loan.

Carry Guarantee

This is a financial commitment in which a party, often a fund sponsor or general partner (GP), guarantees a certain level of carried interest (performance-based compensation) regardless of actual investment performance.

Common Uses of a carry guarantee include:

- Private equity & real estate funds – A GP may negotiate a carry guarantee to ensure they receive a portion of carried interest even if the fund underperforms;
- Joint ventures – A developer or operating partner may guarantee a portion of their profit participation, sometimes backed by personal assets or fees from other deals;
- GP Commitments – In some structures, LPs may require GPs to guarantee a minimum level of carried interest before distributions to ensure alignment of interests.

Completion Guaranty

In view of the hurdles placed in the path to recovery of money by anti-deficiency rules, it makes sense for construction lenders to seek assurance that the improvements that are financed with the proceeds of their loans will actually be built. After all, construction lenders underwrite their loans on the basis of the value of the real property collateral as improved with the buildings and other improvements to be financed with the proceeds of the construction loan. The construction lender sizes its loan in accordance with a loan-to-value ratio that compares the amount of the loan to the projected value of the improved real property, as determined by an appraisal of the prospective value of the property in its fully improved state. To the extent that the borrower fails to complete the improvements, a gap will be revealed between collateral value and the amount of the loan. This gap can be closed by obtaining a guaranty of completion of construction.

In a construction or redevelopment loan, the real property does not fully realize its underwritten value until construction is complete and the project is generating rental income. For this reason, a lender typically requires a completion guaranty under which the guarantor guarantees completion of the construction project if the borrower does not.

GUARANTEES

-4-

Borrowers and guarantors are willing to provide these commitments and guaranties as a necessary condition to receiving financing for their projects. The completion guaranty typically requires that the project be completed the guarantor's sole cost and expense, on time, lien-free, and in accordance with the approved project budget and plans and specifications.

Post-default issues that should be considered and addressed in a completion guaranty include whether:

- The remaining loan proceeds, if any, will be available to the guarantor for project completion;
- The original scheduled completion date will be extended to allow the guarantor additional time to take control of and finish the project;
- The guaranteed obligations can include the obligation to:
 - complete some or all tenant improvements under existing leases;
 - pay operating expenses and real estate taxes for the project, and interest under the loan, until a specified date such as the date on which the project is substantially completed or when the project reaches a stabilized income level (typically in a carry guaranty); and
 - pay or contribute its own funds to cure any loan budget shortfalls or imbalances (also known as the borrower's loan balancing obligations).
 - the lender has an option to complete the project without the guarantor's involvement.

Balancing Guarantee

This is a type of financial guarantee to ensure that a borrower (typically a developer or project sponsor) will cover any funding shortfall needed to complete a project. If the total project costs exceed the available loan proceeds and equity contributions, the guarantor must contribute the difference to "balance" the project's financial needs.

How It Works:

- A lender issues a construction loan to fund a real estate project;
- The borrower provides equity and secures the loan, but the lender wants assurance that the project will be fully funded;
- The balancing guarantee ensures that if the loan and equity are insufficient to complete the project, the guarantor must inject additional capital or obtain alternative financing.

Key Features:

- **Obligation to Cover Shortfalls** – The guarantor must cover gaps in funding to complete the project;
- **Triggered by Cost Overruns** – If construction costs exceed the budgeted amount, the guarantor is required to contribute funds;

GUARANTEES

-5-

- Limited vs. Unlimited Guarantee – Some balancing guarantees cap the guarantor’s liability, while others are open-ended.

Defenses to Guarantees

Under California law, a guarantor is not entitled to many of the protections afforded the borrower under the loan. The guarantor is not entitled to the benefit of the one-form-of-action rule. The one-form-of-action rule, set forth in Civ. Proc. Code, § 726, generally requires that a real property secured lender foreclose on real property security prior to seeking a judgment against the borrower. This protection is not available to the guarantor, and a lender can sue on a guaranty of a real property secured loan without first foreclosing on the real property security. Although not protected by Civ. Proc. Code, § 726, the guarantor is entitled under Civ. Code, § 2845 to require that a lender first pursue remedies against the borrower before pursuing the guarantor. The protection of Civ. Code, § 2845 is waivable and that waiver is generally included in any form of guaranty.

Nor is a guarantor of a real property secured loan entitled to the protection of Civ. Proc. Code, § 580d. Civ. Proc. Code, § 580d provides that no deficiency judgment can be obtained on a note secured by a deed of trust when the lender has foreclosed under its power of sale. While it has been held that a guarantor is not entitled to the protection of § 580d, the courts have provided some relief to guarantors in the form of the “estoppel” defense. [See *Union Bank v. Gradsky*, 265 Cal. App. 2d 40, 71 Cal. Rptr. 64 (2d Dist. 1968)]

The California legislature passed Civ. Code, § 2856 which provides in part that “[a]ny guarantor, including a guarantor of an obligation secured by real property or any interest therein, may waive the guarantor’s rights of subrogation and reimbursement and any other rights and defenses available to the guarantor by reason of Sections 2787 to 2855, inclusive, including, without limitation, (1) any defenses the guarantor may have to the guaranty obligation by reason of an election of remedies by the creditor and (2) any rights or defenses the guarantor may have by reason of protection afforded to the principal with respect to the obligation so defenses pursuant to the anti-deficiency or other laws of this state limiting or discharging the principal’s indebtedness, including, without limitation, Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.” Civ. Code, § 2856 further attempted to establish language which would suffice to waive the defenses referred to in § 2856 subd. (a).

Notwithstanding the broad nature of the guarantor’s waivers, a lender may not be able to utilize such waivers where the waiver would be unlawful or contravenes public policy.” Civ. Code, § 1667; *WRI Opportunity Loans II, LLC v. Cooper*, 154 Cal. App. 4th 525, 545, 65 Cal. Rptr. 3d 205 (2d Dist. 2007). Where a lender is guilty of unclean hands or has otherwise engaged in fraud, it cannot rely on the guarantor’s waivers to allow it to profit from its own fraudulent conduct. *California Bank & Trust v. DelPonti*, 232 Cal. App. 4th 162, 181 Cal. Rptr. 3d 216 (4th Dist. 2014) (holding that it would be a violation of public policy to enforce the guarantors’ pre-default waivers of equitable defenses where the bank willfully breached the loan agreement, causing the default).

A general waiver of all legal defenses may be inadequate in some jurisdictions. Some states require specific reference to the applicable statute for the lender to enforce a waiver to a defense available by statute.

Finally, in California determining the effect of Civ. Proc. Code, §§ 580b, 580d, and 726 on a guaranty, it needs to be determined whether the guaranty constitutes a “true” guaranty or a “purported” or “sham” guaranty. In a “true” guaranty, the guarantor is not a party primarily liable on the debt being guaranteed, while in a “purported” guaranty the guarantor is also primarily liable for the underlying debt. Typically, “purported” guarantees arise where the guarantor is a general partner of the borrower, and thus, primarily liable for the debts of the partnership. While a “true” guaranty is generally enforceable, a “purported” guaranty is generally not enforceable, and a lender is normally required to pursue the guarantor as a party primarily liable under the loan. As a purported guaranty, the lender is subject to the protections afforded the borrower under the “one-form-of-action” rule and the “anti-deficiency” statutes in enforcing the guaranty. [Civ. Proc. Code, §§ 726, 580a, 580b, and 580d]

However where the borrower is a lawfully formed LLC and not an alter ego of the guarantor, the guaranty will not be voidable as a “sham.” *CADC/RADC Venture 2011-1 LLC v. Bradley*, 235 Cal. App. 4th 775, 185 Cal. Rptr. 3d 684 (1st Dist. 2015). What should be of some concern to counsel for lenders is the court’s discussion of the fact that the principals chose their own form of entity and that the lender did not force “the defendants to borrow through a shell entity” or “dictated the form that the shell entity should take.” As most lenders require that the loan be made into a bankruptcy remote “single purpose entity” such lenders may have cause to question the enforceability of their guaranties in such instances.

In addition, the lender should generally avoid allowing a corporation to guarantee the debts of its shareholders or its parent. These guarantee, which are referred to as “upstream guarantee,” may be subject to attack as fraudulent conveyances under either the Uniform Fraudulent Conveyance Act or under the Bankruptcy Code. [11 U.S.C.A. § 548]. Guarantees are subject to this attack when the guarantor is either insolvent at the time it executes the guaranty or becomes insolvent as a result of executing the guaranty, and the guarantor does not receive “reasonably equivalent value” in exchange for executing the guaranty. In the case of a corporation that executes an “upstream guaranty” the benefits of the loan made in connection with the upstream guaranty do not accrue to the benefit of the corporation, and, thus, the corporation is not deemed to have received “reasonably equivalent value.”

In *Black v. O’Haver*, 567 F.2d 361 (10th Cir. 1977), cert. denied 435 U.S. 969 (1978).the court, ruling under Oklahoma law, upheld the trial court’s assessment of damages under a completion guarantee in an amount equal to the amount necessary to permit the lender to complete the project. Although the guarantors in the case were contesting the trial court’s decision on grounds other than the measure of damages, at no point did the appellate court suggest that the calculation of damages was improper.

The leading California case on completion guaranties, *Glendale Federal Savings & Loan Association v. Marina View Heights Development Company, Inc.*, Glendale Fed. Savs. & Loan Ass’n v. Marina View Heights Dev. Co., Inc., 66 Cal. App. 3d 101 (1977). The issue before the court in *Marina View* was only the measure of damages that could be awarded for breach of a

GUARANTEES

-7-

completion guaranty. The court did not consider whether the guarantors could be compelled to complete the improvements. Thus, the first lesson that emerges from a consideration of *Marina View* is implicit: A court will not specifically enforce the obligation of a completion guarantor to construct improvements. Courts are, in general, reluctant to become embroiled, through the exercise of equitable powers, in administration of a complex business transaction. The second lesson of *Marina View* is how to measure damages available to a construction lender under a defaulted completion guaranty. The *Marina View* court drew a distinction between damages available to lenders and to owners. Glendale Federal Savings and Loan Association, the lender in *Marina View*, foreclosed upon the real property collateral by power of sale and sought to recover from the guarantors the cost of the unfinished construction work. The court held that recovery was not allowed. The court stated:

The proper measure of damages for breach of a contract to construct improvements on real property where the work is to be done on plaintiff's property is ordinarily the reasonable cost to the plaintiff of completing the work and not the difference between the value of the property and its value had the improvements been constructed A different rule applies, however, where improvements are to be made on property not owned by the injured party Glendale's interest in the land was solely that of a secured lender The measure of damages, therefore, is the value which the improvements, had they been completed, would have added to the security because that is the contractual benefit of which Glendale was deprived.

Glendale was entitled to damages only to the extent noncompletion of the improvements impaired its security interest. If Glendale had been fully secured on the date of foreclosure, it would have suffered no injury by reason of the failure to construct the improvements and would not have been entitled to damages.

Defenses to Carry Guarantees

In contrast to the obligations covered by a completion guarantee, where many questions arise regarding exactly what it means to guaranty "completion of the project," the nature of the obligations that are subject to a carry guarantee is more easily discernable. A carry guarantee is a guarantee of the obligation of the borrower to pay certain sums of money which represent interest on the loan, insurance premiums, taxes and other costs of operating and maintaining the project. Few questions arise regarding whether the underlying obligation has been performed or regarding the exact amounts necessary to satisfy those obligations.

The questions that do arise in connection with the scope of carry guarantees concern the time period during which the guarantor will be obligated to pay carrying costs and the relationship between the lender's right to project revenue and the guarantor's obligation to pay carrying costs. For example, unless the guaranty otherwise specifies, it is not clear that the guarantor's obligation to cover interest extends to interest which may accrue on the unpaid loan following maturity. If it does extend that far, is the lender obligated to foreclose as soon as reasonably possible in order to mitigate the guarantor's liability? With respect to operating expenses, should the guarantee cover only those expenses which accrue following depletion of amounts allocated in the loan budget to cover those expenses? If the lender forecloses with a full or partial credit bid, is the guarantor relieved of its obligations? Can the lender sit on its hands, send the guarantor a bill every month and wait for the project to get leased up or otherwise

GUARANTEES

-8-

appreciate in value prior to foreclosing? What if the lender collects rents or other project revenues? Must the lender apply those revenues to carrying costs first or can the lender apply those sums first to principal or construction cost overruns?

As in the case of completion guarantee, if these questions are not addressed in the guarantee itself, both the guarantor and the lender may consider litigation to resolve the issues.

GUARANTEES

-9-

INTEREST, CARRY, AND BALANCING EVENT GUARANTY

THIS INTEREST, CARRY, AND BALANCING EVENT GUARANTY (this “Guaranty”) is executed as of _____, by _____, (“Guarantor”), for the benefit of _____, in its capacity as Administrative Agent for and on behalf of the Lenders from time to time party to the Loan Agreement defined below (together with its successors and/or assigns, “Administrative Agent”).

RECITALS:

WHEREAS, pursuant to that certain Loan Agreement dated of even date herewith among _____, (“Borrower”), the Lenders from time to time party thereto, and Administrative Agent (as the same may be amended, the “Loan Agreement”), Lender has agreed to make a Loan to Borrower on the terms and conditions described therein; capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement;

WHEREAS, _____, owns an indirect interest in Borrower of 10%;

WHEREAS, Guarantor is the manager of _____;

WHEREAS, _____ is the sole member of _____ and Guarantor is the managing trustee of the _____;

WHEREAS, _____ are the current beneficiaries under the _____ and are the _____ of Guarantor;

WHEREAS, Guarantor has determined that it is in Guarantor’s best interest to execute this Guaranty to facilitate the Loan to Borrower, which Loan will provide significant benefit to Guarantor and Guarantor’s children; and

WHEREAS, Lender is not willing to make the Loan to Borrower unless Guarantor executes and delivers this Guaranty.

NOW, THEREFORE, as an inducement to Lender to make the Loan to Borrower, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Guaranty of Obligation.

(a) Guarantor hereby irrevocably and unconditionally guarantees to Administrative Agent (for the benefit of the Lenders) the payment and performance of the Guaranteed Obligations as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is fully and personally liable for the Guaranteed Obligations as a primary obligor as set forth herein. As used herein, the term “Guaranteed Obligations” means the payment to Lender of (i) all Interest Costs and Carry Costs that accrue or become payable (less any amounts then on deposit in a Reserve Account in favor of Administrative Agent to pay the

INTEREST, CARRY, AND BALANCING EVENT GUARANTY

- 1 -

same pursuant to the Loan Agreement) through and including the date upon which Stabilization first occurs, and (ii) the amount necessary to cure any Balancing Event (whether or not an Additional Advance is then being requested by Borrower). As used herein “Interest Costs” means all unpaid interest due and payable on the Outstanding Principal Balance under the Notes, whether at the Interest Rate or Default Rate, as applicable; and “Carry Costs” means each of the following to the extent not paid by Borrower on or before the applicable due date (a) all Property Taxes, (b) all Insurance Premiums for the Required Policies under the Loan Documents, and (c) all Operating Expenses incurred in connection with the customary operation of the Property. Guarantor’s obligations under this Guaranty shall be deemed satisfied, and shall terminate, upon the date that Stabilization is achieved if, and solely in the event that, any outstanding amounts due pursuant to this Guaranty have been paid in full as of such date.

(b) Guarantor acknowledges and agrees that the unpaid amount of the Carry Costs as described in this Section 1, if not paid when due pursuant to this Guaranty and the other Loan Documents, shall, at Administrative Agent’s election in its sole and absolute discretion, be deemed to be added to and form a part of the Debt for all purposes under the Loan Documents (it being agreed that Administrative Agent and Lender shall not be required to demonstrate that it has suffered a Loss in such amount in order to recover such amounts from Guarantor). For the avoidance of doubt, Guarantor’s obligation to pay the unpaid amount of the Guaranteed Obligations as described in this Section 1 shall survive any foreclosure or the giving of any deed-in-lieu of foreclosure with respect to the Property, and shall not be reduced or limited by any repayment of the Loan or by any amount bid by Administrative Agent in connection with any foreclosure under the Loan Documents. Guarantor acknowledges and agrees that its obligations under this Guaranty to pay to Administrative Agent the unpaid amount of the Guaranteed Obligations as described in this Section 1 are separate and distinct from any obligation of Borrower to repay the Debt, and that, with respect to Carry Costs, such obligation does not constitute a guaranty of the Loan or of any of Borrower’s obligations with respect to the Loan except to the extent that such unpaid amount of the Carry Costs as described in this Section 1 are actually added to and form a part of the Debt as provided above.

(c) By its acceptance of this Guaranty, Administrative Agent and Lender each agrees to the following terms and conditions:

(i) If any of the Guaranteed Obligations have not been satisfied by Borrower when due in accordance with the Loan Documents, Administrative Agent may deliver written notice to Guarantor identifying the Guaranteed Obligation(s) that have not been satisfied (a “Demand Notice”). Within ten (10) Business Days after receipt of a Demand Notice, Guarantor shall (i) if the Demand Notice relates to Carry Costs, either provide evidence reasonably satisfactory to Administrative Agent that all such Carry Costs have been paid or pay such amount to Administrative Agent, and (ii) if the Demand Notice relates to Interest Costs or an uncured Balancing Event, pay to Administrative Agent an amount equal to the unpaid Interest Costs or the amount necessary to cure such Balancing Event, subject in the case of Property Taxes and Insurance Premiums to Lender’s obligation to make funds available pursuant to Section 1(c)(ii) below.

INTEREST, CARRY, AND BALANCING EVENT GUARANTY

- 2 -

(ii) In the event that Administrative Agent delivers a Demand Notice, then so long as a Completion Guaranty Event of Default (as defined in the Completion Guaranty) does not then exist, Lender agrees to continue to make Additional Advances to Guarantor and make disbursements to Guarantor from any applicable Reserve Account, in either case for the payment or reimbursement of applicable Project Expenditures, subject to the following terms and conditions:

A. Guarantor shall have satisfied all conditions precedent to the making of an Additional Advance or the disbursement of funds from any applicable Reserve Account for the payment or reimbursement of Property Taxes and Insurance Premiums, as applicable (but for the avoidance of doubt, the existence of an Event of Default that is not a Completion Guaranty Event of Default shall not preclude Guarantor from obtaining such Additional Advance or disbursement);

B. Borrower and Guarantor shall have executed an acknowledgement in form and content reasonably acceptable to Administrative Agent that (1) such Additional Advance or disbursement has been made to or for the benefit of Borrower pursuant to the Loan Agreement, and (2) the agreement by Lender to make such further Additional Advances or disbursements to Guarantor pursuant to this Section 1(c) shall not prejudice or impair the right of Administrative Agent to demand performance by Borrower or Guarantor of any of their respective obligations under the Loan Documents, to declare Defaults or Events of Default under the Loan Documents, to exercise any rights and remedies thereunder, or be deemed to be a waiver, estoppel, acceptance of course of conduct or forbearance by Administrative Agent under the Loan Documents; and

C. At Administrative Agent's written election, Administrative Agent may fund the Additional Advances directly to the applicable payee, and all Additional Advances and disbursements made to Guarantor pursuant to this Section 1(c) shall be used only for the purpose of paying or performing the Guaranteed Obligations hereunder.

(iii) Nothing contained in this Section 1(c) shall in any way limit, impair or affect the rights, remedies and options of Administrative Agent or Lender under any of the Loan Documents.

2. Nature of Guaranty. This Guaranty is an irrevocable, absolute, continuing guaranty of payment and performance and not a guaranty of collection. This Guaranty may not be revoked by Guarantor and if Guarantor is a natural person, shall continue to be effective after Guarantor's death (in which event this Guaranty shall be binding upon Guarantor's estate and heirs).

3. Waivers. Guarantor agrees and acknowledges that it has received copies of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to Borrower, (b) acceptance of this Guaranty, (c) any amendment or extension of the Loan Documents, (d) the execution and delivery by Borrower and Administrative Agent and/or Lender of any other loan or credit agreement or of Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Property; (e) the occurrence of any Default or Event of Default, (f) Administrative Agent's transfer or disposition

INTEREST, CARRY, AND BALANCING EVENT GUARANTY

- 3 -

of the Guaranteed Obligations, or any part thereof, to any Person acquiring all or any portion of (or any interest in) the Loan, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any collateral for the Guaranteed Obligations, (h) protest, proof of non-payment or default by Borrower, and (i) any other action at any time taken or omitted by Lender or Administrative Agent, and, generally, all demands and notices of every kind in connection with this Guaranty, the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Guaranteed Obligations, except such notices and demands expressly required in the Loan Documents. In addition Guarantor hereby expressly waives: (i) any right to revoke this Guaranty; (ii) any right to require Lender or Administrative Agent to do any of the following before Guarantor is obligated to pay or perform the Guaranteed Obligations or before Administrative Agent may proceed against Guarantor: (A) sue or exhaust remedies against Borrower or any other person liable for the Guaranteed Obligations or any portion thereof; (B) sue on an accrued right of action in respect of any of the Guaranteed Obligations or bring any other action, exercise any other right, or exhaust any other remedy; (C) enforce rights against Borrower's assets or the collateral pledged by Borrower to secure the Guaranteed Obligations; (D) join Borrower or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty; or (E) mitigate damages or take any other action to reduce, collect or enforce the Guaranteed Obligations; (iii) any right relating to the timing, manner or conduct of Administrative Agent's enforcement of rights against Borrower's assets or the collateral pledged by Borrower to secure the Guaranteed Obligations; (iv) if Guarantor and/or Borrower (or any other person) have each pledged assets to secure the Guaranteed Obligations, any right to require Lender or Administrative Agent to proceed first against collateral pledged by Borrower (or any other person) before proceeding against the collateral pledged by Guarantor; (v) promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, demand for payment or performance, acceptance or notice of acceptance of this Guaranty, presentment, notice of protest, notice of dishonor, notice of the incurring by Borrower of additional indebtedness, notice of any suit or other action by Administrative Agent against Borrower or any other person, any notice to any person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Guaranteed Obligations and this Guaranty; and (vi) any and all rights it may now or hereafter have under any agreement, at law or in equity (including, without limitation, any law subrogating the Guarantor to the rights of Lender or Administrative Agent), to assert any claim against or seek contribution, indemnification or any other form of reimbursement from Borrower or any other party liable for payment of any or all of the Guaranteed Obligations for any payment made by Guarantor under or in connection with this Guaranty or otherwise prior to satisfaction in full of Guarantor's obligations hereunder (except for only those obligations which, by their express terms, survive indefeasible repayment of the Debt).

4. Payment of Expenses. In the event that Guarantor should fail to timely perform any provisions of this Guaranty, Guarantor shall, within ten (10) days of written demand by Administrative Agent, pay Administrative Agent all out-of-pocket costs and expenses (including court costs and reasonable attorneys' fees) actually incurred by Lender or Administrative Agent in the enforcement hereof or the preservation of Lender or Administrative Agent's rights hereunder, together with interest thereon at the Default Rate from the date of demand by Administrative Agent until the date of payment to Administrative Agent. Any amounts payable to Administrative Agent hereunder shall be due and payable on written demand and, if not paid within ten (10) days of such

INTEREST, CARRY, AND BALANCING EVENT GUARANTY

- 4 -

demand therefor, shall bear interest at the Default Rate from the date payment was due. This Section 4 shall survive the payment and performance of the Guaranteed Obligations.

5. Effect of Bankruptcy. In the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law, or any judgment, order or decision thereunder, Lender or Administrative Agent must rescind or restore any payment, or any part thereof, received by Lender or Administrative Agent in satisfaction of the Guaranteed Obligations, as set forth herein, any prior release or discharge from the terms of this Guaranty given to Guarantor by Lender or Administrative Agent shall be without effect, Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment has been due but not made at such time, and this Guaranty shall remain in full force and effect. It is the intention of Borrower and Guarantor that Guarantor's obligations hereunder shall not be discharged except by Guarantor's performance of such obligations and then only to the extent of such performance.

6. No Discharge. Guarantor agrees that its obligations under this Guaranty shall not be released, diminished, or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including without limitation rights to notice) which Guarantor might otherwise have as a result of or in connection with any of the following: (a) any modification, extension, or increase of all or any part of the Guaranteed Obligations or the Loan Documents; (b) any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender or Administrative Agent to Borrower or Guarantor; (c) the insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Borrower, Guarantor or any other party at any time liable for the payment of all or part of the Guaranteed Obligations, or any dissolution of Borrower or Guarantor, or any payment by Borrower to Lender or Administrative Agent being held to constitute a preference under bankruptcy laws or for any reason Lender or Administrative Agent is required to refund such payment or pay such amount to Borrower or someone else pursuant to any applicable Federal or State bankruptcy or insolvency law relating to the bankruptcy or insolvency of Borrower or Guarantor; (d) any sale, lease or transfer of any or all of the assets of Borrower or Guarantor, or any changes in the shareholders, partners or members of Borrower or Guarantor; or any reorganization of Borrower or Guarantor, or the reorganization, merger or consolidation of Borrower into or with any other corporation or entity; (e) the invalidity, illegality or unenforceability of all or any part of the Guaranteed Obligations, or any document or agreement executed in connection with or evidencing the Guaranteed Obligations, for any reason whatsoever, including without limitation the fact that (i) the Guaranteed Obligations, or any part thereof, exceeds the amount permitted by law, (ii) the act of creating the Guaranteed Obligations or any part thereof is ultra vires, (iii) the officers or representatives executing the Loan Documents or otherwise creating the Guaranteed Obligations acted in excess of their authority, (iv) the Guaranteed Obligations violate applicable usury laws, (v) the Borrower (or any other Person) has valid defenses (except the defense of payment or performance of the applicable Guaranteed Obligation), claims or offsets (whether at law, in equity or by agreement) which render the Guaranteed Obligations wholly or partially reduced or uncollectible from Borrower (whether such right of offset, claim or defense arises in connection with the Guaranteed Obligations, the transactions creating the Guaranteed Obligations or otherwise), (vi) the creation, performance or repayment of the Guaranteed Obligations (or the execution, delivery and performance of any document or instrument representing part of the Guaranteed Obligations or executed in connection

INTEREST, CARRY, AND BALANCING EVENT GUARANTY

- 5 -

with the Guaranteed Obligations, or given to secure the repayment of the Guaranteed Obligations) is illegal, uncollectible or unenforceable, or (vii) the Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations or any part thereof for any reason; (f) any full or partial release of the liability of Borrower for any part of the Guaranteed Obligations, or of any co-guarantors, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Guaranteed Obligations, or any part thereof, it being recognized, acknowledged and agreed by Guarantor that Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support of any other party, and Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Guaranteed Obligations, or that Lender or Administrative Agent will look to other Persons to pay or perform the Guaranteed Obligations; (g) the taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Guaranteed Obligations; (h) any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including without limitation negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Guaranteed Obligations; (i) the failure of Lender or Administrative Agent or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security, including but not limited to any neglect, delay, omission, failure; or (j) any other action taken or omitted to be taken with respect to the Loan Documents, the Guaranteed Obligations, or the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will be required to pay the Guaranteed Obligations pursuant to the terms hereof, it is the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay the Guaranteed Obligations when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever, whether contemplated or un contemplated, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Guaranteed Obligations (except for only those obligations which, by their express terms, survive indefeasible repayment of the Debt).

7. Representations and Warranties. To induce Administrative Agent and Lender to enter into the Loan Documents, Guarantor represents and warrants to Administrative Agent and Lender as follows: (a) Guarantor has received, or will receive, direct or indirect benefit from the making of the Loan to Borrower; (b) Guarantor is familiar with the financial condition of the Borrower and is familiar with the value of any and all collateral intended to be created as security for the payment of the Guaranteed Obligations (however, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty); (c) neither Administrative Agent nor any Lender or other party has made any representation, warranty or statement to Guarantor in order to induce the Guarantor to execute this Guaranty; (d) as of the date hereof, giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is solvent, and has assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and has property and assets sufficient to satisfy and repay its obligations and liabilities; and (e) this Guaranty is a legal and binding obligation of Guarantor and is enforceable

INTEREST, CARRY, AND BALANCING EVENT GUARANTY

- 6 -

in accordance with its terms, except as limited by general principles of equity and bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights. All representations and warranties made by Guarantor herein shall survive the execution hereof.

8. Financial Covenants. Section 8 of the Recourse Guaranty is hereby incorporated as part of this Guaranty with the same effect as if set forth fully herein.

9. Subordination of All Guarantor Claims. In the event of receivership, bankruptcy, reorganization, arrangement, debtor's relief, or other insolvency proceedings involving Guarantor as debtor, Administrative Agent and Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims (as defined below). Guarantor hereby assigns such dividends and payments to Administrative Agent. Should Administrative Agent receive, for application upon the Guaranteed Obligations, any such dividend or payment which is otherwise payable to Guarantor, and which, as between Borrower and Guarantor, shall constitute a credit upon the Guarantor Claims, then upon payment to Administrative Agent in full of the Guaranteed Obligations, Guarantor shall become subrogated to the rights of Administrative Agent to the extent that such payments to Administrative Agent on the Guarantor Claims have contributed toward the liquidation of the Guaranteed Obligations, and such subrogation shall be with respect to that proportion of the Guaranteed Obligations which would have been unpaid if Administrative Agent had not received dividends or payments upon the Guarantor Claims. As used herein, the term "Guarantor Claims" shall mean all debts and liabilities of Borrower to Guarantor, whether such debts and liabilities now exist or are hereafter incurred or arise (including, without limitation, all rights and claims of Guarantor against Borrower (arising as a result of subrogation or otherwise) as a result of Guarantor's payment of all or a portion of the Guaranteed Obligations). In the event that Guarantor should receive any payment which is prohibited by this Guaranty, Guarantor agrees to hold such payment in trust for Administrative Agent and promptly pay the same to Administrative Agent to the extent of any unpaid Guaranteed Obligations. Guarantor agrees that until the Project has been Completed and Guarantor's obligations hereunder have been paid and performed in full, any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guaranteed Obligations, regardless of whether such encumbrances in favor of Guarantor or Administrative Agent presently exist or are hereafter created or attached. Without the prior written consent of Administrative Agent, until the Project has been Completed and Guarantor's obligations hereunder have been indefeasibly paid and performed in full (except for only those obligations which, by their express terms, survive indefeasible repayment of the Debt), Guarantor shall not (a) exercise or enforce any creditor's right it may have against Borrower or (b) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including without limitation the commencement of, or joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any liens, mortgages, deeds of trust, security interests, collateral rights, judgments or other encumbrances on assets of Borrower held by Guarantor.

INTEREST, CARRY, AND BALANCING EVENT GUARANTY

- 7 -

10. GOVERNING LAW; VENUE. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN §§ 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT TO THE EXTENT THAT THE APPLICABILITY OF ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, IN WHICH CASE SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST ADMINISTRATIVE AGENT, LENDER OR GUARANTOR ARISING OUT OF OR RELATING TO THIS GUARANTY MAY AT ADMINISTRATIVE AGENT'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND GUARANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. GUARANTOR DOES HEREBY DESIGNATE AND APPOINT:

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO GUARANTOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON GUARANTOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. GUARANTOR (I) SHALL GIVE PROMPT NOTICE TO ADMINISTRATIVE AGENT OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF LENDER OR ADMINISTRATIVE AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST GUARANTOR IN ANY OTHER JURISDICTION. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS GUARANTY.

11. WAIVER OF RIGHT TO TRIAL BY JURY. GUARANTOR, ADMINISTRATIVE AGENT, AND LENDER (BY THEIR ACCEPTANCE OF THIS GUARANTY) HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE

INTEREST, CARRY, AND BALANCING EVENT GUARANTY

- 8 -

TRIALE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS GUARANTY, THE NOTE, THE LOAN AGREEMENT, THE SECURITY INSTRUMENT, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GUARANTOR, ADMINISTRATIVE AGENT, AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. THE PARTIES HERETO ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GUARANTOR.

12. Miscellaneous. All notices, consents, approvals and requests required or permitted hereunder shall be given (and shall be deemed effective) in the manner described in Section 8.10 of the Loan Agreement, and Guarantor's address for such purposes shall be the address of Guarantor set forth on the signature page hereof. No failure to exercise, and no delay in exercising, on the part of Lender or Administrative Agent, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, Guarantor may not assign any of its rights, powers, duties or obligations hereunder. This Guaranty embodies the entire agreement of Guarantor, Lender and Administrative Agent with respect to Guarantor's guaranty of the Guaranteed Obligations and supersedes any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof. There are no oral agreements between Guarantor, Lender and Administrative Agent. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable and all other provisions of this Guaranty shall remain in full force and effect. This Guaranty may be amended only by an instrument in writing executed by the party or an authorized representative of the party against whom such amendment is sought to be enforced. If Guarantor consists of more than one Person, the obligations and liabilities of each such Person shall be joint and several. This Guaranty may be executed in counterparts.

13. Intercreditor Agreement. Guarantor hereby acknowledges and agrees that any intercreditor agreement entered into between Administrative Agent and Mezzanine Loan Administrative Agent will be solely for the benefit of Administrative Agent and Mezzanine Loan Administrative Agent, and that none of Guarantor, Borrower, or Mezzanine Borrower shall be third-party beneficiaries (intended or otherwise) of any of the provisions therein, have any rights thereunder, or be entitled to rely on any of the provisions contained therein. Administrative Agent and Mezzanine Loan Administrative Agent have no obligation to disclose to Guarantor the contents of any such intercreditor agreement. Guarantor's obligations hereunder are and will be independent of any such intercreditor agreement and shall remain unmodified by the terms and provisions thereof.

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INTEREST, CARRY, AND BALANCING EVENT GUARANTY

- 9 -

AMERICAN BANKRUPTCY INSTITUTE

EXECUTED as of the day and year first above written.

GUARANTOR:

NAME

Address for purposes of notice:

Name
Address
Address
Email

With a copy to:

Name
Address
Address
Email

INTEREST, CARRY, AND BALANCING EVENT GUARANTY - SIGNATURE PAGE

GUARANTY OF RECOURSE OBLIGATIONS

THIS GUARANTY OF RECOURSE OBLIGATIONS (this “Guaranty”) is executed as of _____, by _____, (“Guarantor”), for the benefit of _____, in its capacity as Administrative Agent for and on behalf of the Lenders from time to time party to the Loan Agreement defined below (together with its successors and/or assigns, “Administrative Agent”).

RECITALS:

WHEREAS, pursuant to that certain Loan Agreement dated of even date herewith among _____, (“Borrower”), the Lenders from time to time party thereto, and Administrative Agent (as the same may be amended, the “Loan Agreement”), Lender has agreed to make a Loan to Borrower on the terms and conditions described therein; capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement;

WHEREAS, _____, owns an indirect interest in Borrower of 10%;

WHEREAS, Guarantor is the manager of _____;

WHEREAS, _____, is the sole member of Bristlecone and Guarantor is the managing trustee of the _____;

WHEREAS, _____ are the current beneficiaries under the _____ and are the children of Guarantor;

WHEREAS, Guarantor has determined that it is in Guarantor’s best interest to execute this Guaranty to facilitate the Loan to Borrower, which Loan will provide significant benefit to Guarantor and Guarantor’s children; and

WHEREAS, Lender is not willing to make the Loan to Borrower unless Guarantor executes and delivers this Guaranty.

NOW, THEREFORE, as an inducement to Lender to make the Loan to Borrower, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Guaranty of Obligation. Guarantor hereby irrevocably and unconditionally guarantees to Administrative Agent (for the benefit of the Lenders) the payment and performance of the Guaranteed Obligations as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is fully and personally liable for the Guaranteed Obligations as a primary obligor as set forth herein. As used herein, the term “Guaranteed Obligations” means (a) the payment to Administrative Agent (for the benefit of the Lenders) of all of the Recourse Liabilities, and (b) upon the occurrence of a Springing Recourse Event, the payment to Administrative Agent (for the benefit of the Lenders) of the Debt. Notwithstanding anything to the contrary contained herein, Guarantor shall have no liability under this Guaranty

GUARANTY OF RECOURSE OBLIGATIONS

- 1 -

for Recourse Liabilities or Springing Recourse Events to the extent that Guarantor can prove that such Recourse Liabilities or Springing Recourse Events arose from acts or omissions caused by Mezzanine Loan Administrative Agent or its Affiliates (i) in connection with the exercise of remedies under the Mezzanine Loan Documents (including, without limitation, a foreclosure on, or transfer in lieu of foreclosure of, the equity interests in Borrower pursuant to the Mezzanine Loan Documents), or (ii) after completion of such foreclosure or transfer in lieu of foreclosure under the Mezzanine Loan Documents.

2. Nature of Guaranty. This Guaranty is an irrevocable, absolute, continuing guaranty of payment and performance and not a guaranty of collection. This Guaranty may not be revoked by Guarantor and if Guarantor is a natural person, shall continue to be effective after Guarantor's death (in which event this Guaranty shall be binding upon Guarantor's estate and heirs).

3. Waivers. Guarantor agrees and acknowledges that it has received copies of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to Borrower, (b) acceptance of this Guaranty, (c) any amendment or extension of the Loan Documents, (d) the execution and delivery by Borrower and Administrative Agent and/or Lender of any other loan or credit agreement or of Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Property, (e) the occurrence of any Default or Event of Default, (f) Administrative Agent's transfer or disposition of the Guaranteed Obligations, or any part thereof, to any Person acquiring all or any portion of (or any interest in) the Loan, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any collateral for the Guaranteed Obligations, (h) protest, proof of non-payment or default by Borrower, and (i) any other action at any time taken or omitted by Lender or Administrative Agent, and, generally, all demands and notices of every kind in connection with this Guaranty, the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Guaranteed Obligations, except such notices and demands expressly required in the Loan Documents. In addition Guarantor hereby expressly waives: (i) any right to revoke this Guaranty; (ii) any right to require Lender or Administrative Agent to do any of the following before Guarantor is obligated to pay or perform the Guaranteed Obligations or before Administrative Agent may proceed against Guarantor: (A) sue or exhaust remedies against Borrower or any other person liable for the Guaranteed Obligations or any portion thereof; (B) sue on an accrued right of action in respect of any of the Guaranteed Obligations or bring any other action, exercise any other right, or exhaust any other remedy; (C) enforce rights against Borrower's assets or the collateral pledged by Borrower to secure the Guaranteed Obligations; (D) join Borrower or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty; or (E) mitigate damages or take any other action to reduce, collect or enforce the Guaranteed Obligations; (iii) any right relating to the timing, manner or conduct of Administrative Agent's enforcement of rights against Borrower's assets or the collateral pledged by Borrower to secure the Guaranteed Obligations; (iv) if Guarantor and/or Borrower (or any other person) have each pledged assets to secure the Guaranteed Obligations, any right to require Lender or Administrative Agent to proceed first against collateral pledged by Borrower (or any other person) before proceeding against the collateral pledged by Guarantor; (v) promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, demand for payment or performance, acceptance or notice of acceptance of this Guaranty, presentment, notice of protest, notice of dishonor, notice of the incurring by Borrower

GUARANTY OF RECOURSE OBLIGATIONS

- 2 -

of additional indebtedness, notice of any suit or other action by Administrative Agent against Borrower or any other person, any notice to any person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Guaranteed Obligations and this Guaranty; and (vi) any and all rights it may now or hereafter have under any agreement, at law or in equity (including, without limitation, any law subrogating the Guarantor to the rights of Lender or Administrative Agent), to assert any claim against or seek contribution, indemnification or any other form of reimbursement from Borrower or any other party liable for payment of any or all of the Guaranteed Obligations for any payment made by Guarantor under or in connection with this Guaranty or otherwise prior to satisfaction in full of Guarantor's obligations hereunder (except for only those obligations which, by their express terms, survive indefeasible repayment of the Debt).

4. Payment of Expenses. In the event that Guarantor should fail to timely perform any provisions of this Guaranty, Guarantor shall, within ten (10) days of written demand by Administrative Agent, pay Administrative Agent all out-of-pocket costs and expenses (including court costs and reasonable attorneys' fees) actually incurred by Lender or Administrative Agent in the enforcement hereof or the preservation of Lender or Administrative Agent's rights hereunder, together with interest thereon at the Default Rate from the date of demand by Administrative Agent until the date of payment to Administrative Agent. Any amounts payable to Administrative Agent hereunder shall be due and payable on written demand and, if not paid within ten (10) days of such demand therefor, shall bear interest at the Default Rate from the date payment was due. This Section 4 shall survive the payment and performance of the Guaranteed Obligations.

5. Effect of Bankruptcy. In the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law, or any judgment, order or decision thereunder, Lender or Administrative Agent must rescind or restore any payment, or any part thereof, received by Lender or Administrative Agent in satisfaction of the Guaranteed Obligations, as set forth herein, any prior release or discharge from the terms of this Guaranty given to Guarantor by Lender or Administrative Agent shall be without effect, Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment has been due but not made at such time, and this Guaranty shall remain in full force and effect. It is the intention of Borrower and Guarantor that Guarantor's obligations hereunder shall not be discharged except by Guarantor's performance of such obligations and then only to the extent of such performance.

6. No Discharge. Guarantor agrees that its obligations under this Guaranty shall not be released, diminished, or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including without limitation rights to notice) which Guarantor might otherwise have as a result of or in connection with any of the following: (a) any modification, extension, or increase of all or any part of the Guaranteed Obligations or the Loan Documents; (b) any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender or Administrative Agent to Borrower or Guarantor; (c) the insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Borrower, Guarantor or any other party at any time liable for the payment of all or part of the Guaranteed Obligations, or any dissolution of Borrower or Guarantor, or any payment by Borrower to Lender or Administrative Agent being held to constitute a preference under bankruptcy laws or for any reason Lender or Administrative Agent is required to refund such

GUARANTY OF RECOURSE OBLIGATIONS

- 3 -

payment or pay such amount to Borrower or someone else pursuant to any applicable Federal or State bankruptcy or insolvency law relating to the bankruptcy or insolvency of Borrower or Guarantor; (d) any sale, lease or transfer of any or all of the assets of Borrower or Guarantor, or any changes in the shareholders, partners or members of Borrower or Guarantor; or any reorganization of Borrower or Guarantor, or the reorganization, merger or consolidation of Borrower into or with any other corporation or entity; (e) the invalidity, illegality or unenforceability of all or any part of the Guaranteed Obligations, or any document or agreement executed in connection with or evidencing the Guaranteed Obligations, for any reason whatsoever, including without limitation the fact that (i) the Guaranteed Obligations, or any part thereof, exceeds the amount permitted by law, (ii) the act of creating the Guaranteed Obligations or any part thereof is ultra vires, (iii) the officers or representatives executing the Loan Documents or otherwise creating the Guaranteed Obligations acted in excess of their authority, (iv) the Guaranteed Obligations violate applicable usury laws, (v) the Borrower (or any other Person) has valid defenses (except the defense of payment or performance of the applicable Guaranteed Obligation), claims or offsets (whether at law, in equity or by agreement) which render the Guaranteed Obligations wholly or partially reduced or uncollectible from Borrower (whether such right of offset, claim or defense arises in connection with the Guaranteed Obligations, the transactions creating the Guaranteed Obligations or otherwise), (vi) the creation, performance or repayment of the Guaranteed Obligations (or the execution, delivery and performance of any document or instrument representing part of the Guaranteed Obligations or executed in connection with the Guaranteed Obligations, or given to secure the repayment of the Guaranteed Obligations) is illegal, uncollectible or unenforceable, or (vii) the Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations or any part thereof for any reason; (f) any full or partial release of the liability of Borrower for any part of the Guaranteed Obligations, or of any co-guarantors, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Guaranteed Obligations, or any part thereof, it being recognized, acknowledged and agreed by Guarantor that Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support of any other party, and Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Guaranteed Obligations, or that Lender or Administrative Agent will look to other Persons to pay or perform the Guaranteed Obligations; (g) the taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Guaranteed Obligations; (h) any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including without limitation negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Guaranteed Obligations; (i) the failure of Lender or Administrative Agent or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security, including but not limited to any neglect, delay, omission, failure; or (j) any other action taken or omitted to be taken with respect to the Loan Documents, the Guaranteed Obligations, or the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will be required to pay the Guaranteed Obligations pursuant to the terms hereof, it is the unambiguous and unequivocal

GUARANTY OF RECOURSE OBLIGATIONS

- 4 -

intention of Guarantor that Guarantor shall be obligated to pay the Guaranteed Obligations when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever, whether contemplated or un contemplated, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Guaranteed Obligations (except for only those obligations which, by their express terms, survive indefeasible repayment of the Debt).

7. Representations and Warranties. To induce Administrative Agent and Lender to enter into the Loan Documents, Guarantor represents and warrants to Administrative Agent and Lender as follows: (a) Guarantor has received, or will receive, direct or indirect benefit from the making of the Loan to Borrower; (b) Guarantor is familiar with the financial condition of the Borrower and is familiar with the value of any and all collateral intended to be created as security for the payment of the Guaranteed Obligations (however, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty); (c) neither Administrative Agent nor any Lender or other party has made any representation, warranty or statement to Guarantor in order to induce the Guarantor to execute this Guaranty; (d) as of the date hereof, giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is solvent, and has assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and has property and assets sufficient to satisfy and repay its obligations and liabilities; and (e) this Guaranty is a legal and binding obligation of Guarantor and is enforceable in accordance with its terms, except as limited by general principles of equity and bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights. All representations and warranties made by Guarantor herein shall survive the execution hereof.

8. Financial Covenants; Reporting. Guarantor (together with all Persons that constitute Guarantor) shall at all times (a) maintain a Guarantor Net Worth (as defined on Schedule 1) of at least _____ MILLION DOLLARS (\$ _____), and (b) own Liquid Assets (as defined on Schedule 1) of at least _____ MILLION DOLLARS (\$ _____) in its own name. Guarantor shall deliver to Administrative Agent: (i) within ninety (90) days after the end of each calendar year, a complete copy of Guarantor's annual financial statements prepared in accordance with the Approved Accounting Method and certified by Guarantor (provided, however, audited statements shall be delivered to Administrative Agent within sixty (60) days of Administrative Agent's request therefor during the existence of an Event of Default or at any other time up to two (2) times during the term of the Loan in the event that Administrative Agent reasonably determines that the financial statements delivered by Guarantor are incomplete, inconsistent, or inaccurate, and Guarantor has not corrected any such deficiencies within fifteen (15) days of written notice thereof from Administrative Agent); (ii) not later than June 30 and December 31 of each calendar year, a Guarantor Certificate (as defined below), with the "Financial Covenants Certification" section completed in full; (iii) within ten (10) Business Days after Administrative Agent's request (but not sooner than the date on which the same is actually filed), a copy of Guarantor's filed federal income tax return for the preceding year; (iv) within five (5) Business Days after the filing of Guarantor's federal tax return, a certificate from an Independent Accountant confirming that such income tax return was properly filed and attaching evidence that all tax obligations stated therein to be due have been paid; and (v) within thirty (30) days after request by Administrative Agent, such other financial information with respect to Guarantor as Administrative Agent may reasonably request. Guarantor shall deliver to Administrative Agent a

GUARANTY OF RECOURSE OBLIGATIONS

- 5 -

Guarantor Certificate with each items delivered pursuant to the foregoing clauses. As used herein, “Guarantor Certificate” means a certificate in the form attached hereto as Exhibit A. In addition, no individual constituting Guarantor shall transfer any of his/her assets to a living trust (or other trust arrangement) without satisfying the following conditions: (i) a guaranty of recourse obligations and an environmental indemnity agreement on substantially the same forms as the Guaranty and the Environmental Indemnity executed by Guarantor in connection with the Loan shall have been executed by the trustee of such living trust and shall be effective to bind such trust; (ii) Borrower, Guarantor and such living trust shall have executed such other modifications to and reaffirmations of the Loan Documents as Administrative Agent may require (and Administrative Agent shall have received such legal opinions of counsel to such parties with respect thereto as Administrative Agent may reasonably require, including, without limitation, a non-consolidation opinion); and (iii) Borrower and/or Guarantor shall have reimbursed Administrative Agent for all reasonable actual third party out of pocket expenses incurred by Administrative Agent in connection therewith.

9. Subordination of All Guarantor Claims. In the event of receivership, bankruptcy, reorganization, arrangement, debtor’s relief, or other insolvency proceedings involving Guarantor as debtor, Administrative Agent and Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims (as defined below). Guarantor hereby assigns such dividends and payments to Administrative Agent. Should Administrative Agent receive, for application upon the Guaranteed Obligations, any such dividend or payment which is otherwise payable to Guarantor, and which, as between Borrower and Guarantor, shall constitute a credit upon the Guarantor Claims, then upon payment to Administrative Agent in full of the Guaranteed Obligations, Guarantor shall become subrogated to the rights of Administrative Agent to the extent that such payments to Administrative Agent on the Guarantor Claims have contributed toward the liquidation of the Guaranteed Obligations, and such subrogation shall be with respect to that proportion of the Guaranteed Obligations which would have been unpaid if Administrative Agent had not received dividends or payments upon the Guarantor Claims. As used herein, the term “Guarantor Claims” shall mean all debts and liabilities of Borrower to Guarantor, whether such debts and liabilities now exist or are hereafter incurred or arise (including, without limitation, all rights and claims of Guarantor against Borrower (arising as a result of subrogation or otherwise) as a result of Guarantor’s payment of all or a portion of the Guaranteed Obligations). In the event that Guarantor should receive any payment which is prohibited by this Guaranty, Guarantor agrees to hold such payment in trust for Administrative Agent and promptly pay the same to Administrative Agent to the extent of any unpaid Guaranteed Obligations. Guarantor agrees that until the Debt is repaid in full and Guarantor’s obligations hereunder have been paid and performed in full, any liens, security interests, judgment liens, charges or other encumbrances upon Borrower’s assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any liens, security interests, judgment liens, charges or other encumbrances upon Borrower’s assets securing payment of the Guaranteed Obligations, regardless of whether such encumbrances in favor of Guarantor or Administrative Agent presently exist or are hereafter created or attached. Without the prior written consent of Administrative Agent, until the Debt is indefeasibly repaid in full and Guarantor’s obligations hereunder have been indefeasibly paid and performed in full (except for only those obligations which, by their express terms, survive indefeasible repayment of the Debt), Guarantor

GUARANTY OF RECOURSE OBLIGATIONS

- 6 -

shall not (a) exercise or enforce any creditor's right it may have against Borrower or (b) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including without limitation the commencement of, or joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any liens, mortgages, deeds of trust, security interests, collateral rights, judgments or other encumbrances on assets of Borrower held by Guarantor.

10. **GOVERNING LAW; VENUE.** THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN §§ 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT TO THE EXTENT THAT THE APPLICABILITY OF ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, IN WHICH CASE SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST ADMINISTRATIVE AGENT, LENDER OR GUARANTOR ARISING OUT OF OR RELATING TO THIS GUARANTY MAY AT ADMINISTRATIVE AGENT'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND GUARANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. GUARANTOR DOES HEREBY DESIGNATE AND APPOINT:

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO GUARANTOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON GUARANTOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. GUARANTOR (I) SHALL GIVE PROMPT NOTICE TO ADMINISTRATIVE AGENT OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF LENDER OR ADMINISTRATIVE AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO

GUARANTY OF RECOURSE OBLIGATIONS

- 7 -

COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST GUARANTOR IN ANY OTHER JURISDICTION. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS GUARANTY.

11. WAIVER OF RIGHT TO TRIAL BY JURY. GUARANTOR, ADMINISTRATIVE AGENT, AND LENDER (BY THEIR ACCEPTANCE OF THIS GUARANTY) HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS GUARANTY, THE NOTE, THE LOAN AGREEMENT, THE SECURITY INSTRUMENT, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GUARANTOR, ADMINISTRATIVE AGENT, AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. THE PARTIES HERETO ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GUARANTOR.

12. Miscellaneous. All notices, consents, approvals and requests required or permitted hereunder shall be given (and shall be deemed effective) in the manner described in Section 8.10 of the Loan Agreement, and Guarantor's address for such purposes shall be the address of Guarantor set forth on the signature page hereof. No failure to exercise, and no delay in exercising, on the part of Lender or Administrative Agent, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, Guarantor may not assign any of its rights, powers, duties or obligations hereunder. This Guaranty embodies the entire agreement of Guarantor, Lender and Administrative Agent with respect to Guarantor's guaranty of the Guaranteed Obligations and supersedes any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof. There are no oral agreements between Guarantor, Lender and Administrative Agent. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable and all other provisions of this Guaranty shall remain in full force and effect. This Guaranty may be amended only by an instrument in writing executed by the party or an authorized representative of the party against whom such amendment is sought to be enforced. If Guarantor consists of more than one Person, the obligations and liabilities of each such Person shall be joint and several. This Guaranty may be executed in counterparts.

13. Intercreditor Agreement. Guarantor hereby acknowledges and agrees that any intercreditor agreement entered into between Administrative Agent and Mezzanine Loan Administrative Agent will be solely for the benefit of Administrative Agent and Mezzanine Loan Administrative Agent, and that none of Guarantor, Borrower, or Mezzanine Borrower shall be third-party beneficiaries (intended or otherwise) of any of the provisions therein, have any rights

GUARANTY OF RECOURSE OBLIGATIONS

- 8 -

thereunder, or be entitled to rely on any of the provisions contained therein. Administrative Agent and Mezzanine Loan Administrative Agent have no obligation to disclose to Guarantor the contents of any such intercreditor agreement. Guarantor's obligations hereunder are and will be independent of any such intercreditor agreement and shall remain unmodified by the terms and provisions thereof.

[The Remainder of This Page is Intentionally Blank]

GUARANTY OF RECOURSE OBLIGATIONS

- 9 -

AMERICAN BANKRUPTCY INSTITUTE

EXECUTED as of the day and year first above written.

GUARANTOR:

Name

Address for purposes of notice:

Name

Address

Address

Email

With a copy to:

Name

Address

Address

Email

GUARANTY OF RECOURSE OBLIGATIONS – SIGNATURE PAGE

SCHEDULE 1

For purposes hereof, the following terms shall have the following respective meanings:

“Contingent Liabilities” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person (but without duplication) (i) with respect to any debt or other obligation of another if the primary purpose or intent thereof by the Person incurring the Contingent Liability is to provide assurance to the obligee of such obligation of another that such obligation of another will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such obligation will be protected (in whole or in part) against loss in respect thereof, (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings, (iii) under completion guaranties, or (iv) under hedge contracts, and shall include, without limitation: (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (b) the obligation to make take-or-pay or similar payments if required regardless of non-performance by any other party or parties to an agreement, and (c) any liability of such Person for the obligation of another through any agreement (contingent or otherwise) (A) to purchase, repurchase or otherwise acquire such obligation or any security therefore, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (B) to maintain the solvency of any balance sheet item, level of income or financial condition of another. The amount of any Contingent Liability shall be determined in accordance with GAAP. For the avoidance of doubt, “Contingent Liabilities” shall not include the obligations of a Person under a non-recourse carve-out (“bad acts”) guaranty or an environmental indemnity agreement until the occurrence of an event that causes the obligations of such Person thereunder to be a liquidated sum (e.g., the entry of a judgment the amount of which is subject to such guaranty, the triggering of full or partial recourse upon the filing of a bankruptcy, etc.).

“Guarantor Net Worth” means, at any time: (i) the fair market value of the total assets of a Guarantor (excluding goodwill, patents, trademarks, trade names, organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) determined in accordance with GAAP, minus (ii) the total liabilities of such Guarantor (including, without limitation, such Guarantor’s Contingent Liabilities that would be disclosed under GAAP, accrued and deferred income taxes, and any reserves against assets) determined in accordance with GAAP; provided, however, in no event shall Guarantor’s Net Worth be calculated to include the value of the Property or the value of any retirement plan or account that is protected from creditors.

“Liquid Assets” shall mean the fair market value of unrestricted, unencumbered assets in the form of (i) cash, (ii) cash equivalents, (iii) certificates of deposit or time deposits with terms of six (6) months or less issued by a bank or trust company which is organized under the laws of the United States of America or any state thereof having capital, surplus and undivided profits aggregating in excess of \$500,000,000 and whose long-term debt is rated “A-3” or higher, “A-” or higher or “A-” or higher according to Moody’s, S&P or Fitch Ratings (or such similar

equivalent rating by at least one “nationally recognized statistical rating organization” (as defined in Rule 436 under the Securities Act)), respectively, (iv) investments in commercial paper, maturing not more than six (6) months after the date of acquisition, issued by a corporation (other than an Affiliate of Borrower or Guarantor) organized and in existence under the laws of the United States of America or any State thereof with a rating at the time as of which any Investment therein is made of “P-1” (or higher) according to Moody’s, “A-1” (or higher) according to S&P or “A-1” (or higher) according to Fitch Ratings (or such similar equivalent rating by at least one “nationally recognized statistical rating organization” (as defined in Rule 436 under the Securities Act)), (v) U.S. treasury bills and other obligations of the United States of America, all with terms of six (6) months or less, and (vi) readily marketable securities (excluding “margin stock” (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), restricted stock and stock subject to the provisions of Rule 144 of the Securities and Exchange Commission) listed and traded on a recognized stock exchange or traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations.

EXHIBIT A

FORM OF GUARANTOR CERTIFICATE

Borrower Name:

Guarantor Name:

Property Address:

Loan No.:

Date:

This Guarantor Certificate is being delivered in accordance with that certain Loan Agreement dated _____, 20 (the "Loan Agreement") among Borrower, the Lenders from time to time party thereto, and _____, in its capacity as administrative agent for and on behalf of the Lenders ("Administrative Agent"), and that certain Guaranty of Recourse Obligations executed by the undersigned ("Guarantor") in favor of Administrative Agent in connection with the Loan (the "Guaranty"). Capitalized terms used in this Guarantor Certificate and not specifically defined herein have the meaning provided in the Loan Agreement or the Guaranty, as applicable. The undersigned [officer of] Guarantor, having personal knowledge of the matters set forth herein, hereby certifies [on behalf of Guarantor] the following to Administrative Agent and the Lenders:

[] **Delivery of Reports:** Enclosed herewith are the following documents being delivered pursuant to Section 8 of the Guaranty: [____]. Guarantor hereby represents, warrants, and certifies that each such document is true, correct, and complete in all material respects (and does not omit to state any material fact necessary to make the same not misleading in any material respect), and, where applicable, fairly presents the financial condition and the results of operations of Guarantor being reported upon, and have been prepared in accordance with the Approved Accounting Method.

[____] **Financial Covenants Certification:**

(a) The Guarantor Net Worth of Guarantor as of the end of the calendar quarter ending [_____] is: \$[____];

(b) Guarantor owns Liquid Assets as of the end of the calendar quarter ending [_____] in the amount of: \$[____];

(c) Guarantor is/is not in compliance with the requirements of Section 8 of the Guaranty as of date of this Guarantor Certificate;

(d) The following is a reasonably detailed description of the nature of each asset asserted by Guarantor as constituting a Liquid Asset for purposes of the above statements: [_____].

GUARANTY OF RECOURSE OBLIGATIONS – EXHIBIT A

- 13 -

AMERICAN BANKRUPTCY INSTITUTE

(e) The above information is true, correct, and complete in all material respects (and does not omit to state any material fact necessary to make the same not misleading in any material respect), and, where applicable, fairly presents the financial condition and the results of operations of Guarantor being reported upon, and have been prepared in accordance with the Approved Accounting Method.

BY SIGNING BELOW, the undersigned certifies that (i) all information provided in this Guarantor Certificate is true, complete, and correct in all material respects and does not omit any material fact that would make any such information false or misleading, and (ii) if applicable, the undersigned representative of Guarantor is duly authorized to sign this Guarantor Certificate on Guarantor's behalf.

Date: [_____]

Name:

Title:

GUARANTY OF RECOURSE OBLIGATIONS – EXHIBIT A

- 14 -

COMPLETION GUARANTY

THIS GUARANTY (the “Guaranty”) is made as of _____, 202_, by _____, a _____ (“Guarantor”), in favor of _____ a _____ (“Holder”).

1. Except as otherwise provided in this Guaranty, all terms defined in that certain Construction Loan Agreement of even date herewith by and between _____, a _____ (“Maker”) and Holder (the “Loan Agreement”) shall have the same meaning when used in this Guaranty. Such defined terms are denoted in the Loan Agreement and in this Guaranty by initial capital letters.

2. In order to induce Holder to loan to Maker the sum of _____ Dollars (\$ _____) (the “Loan”), to be evidenced by a secured promissory note of even date herewith (the “Note”) executed by Maker and payable to the order of Holder, Guarantor hereby unconditionally and irrevocably, guarantees to Holder and to its successors, endorsees and/or assigns, the prompt and complete performance of Maker’s obligation, as set forth in the Loan Agreement, to:

(a) complete, and pay the cost of completing, the Improvements (exclusive of tenant improvements) in accordance with the Construction Schedule and the Plans and Specifications, as the same may be modified from time to time, free and clear of all defects and liens and in compliance with all applicable law;

(b) complete, and pay the cost of completing, all tenant improvements required under any lease of space in the Improvements which is executed by Maker on the date, if any, on which Holder takes title to the Improvements through judicial or nonjudicial foreclosure or deed in lieu thereof;

(c) pay all expenses, charges, costs and fees of or relating to the construction of the Improvements, including, without limitation, all permitting fees, licensing fees, amounts payable under the general construction contract and all subcontracts, and amounts payable to all architects, engineers and other consultants engaged in connection with the construction of the Improvements, and

(d) pay immediately upon demand thereof, all amounts required to maintain or bring the Loan “in balance” as required under Section ____ of the Loan Agreement.

Completion of the Improvements shall occur at such time as Holder shall have approved the completed work described in the Plans and Specifications and a copy of the final certificate of occupancy issued by the appropriate governmental authority. The obligations guaranteed pursuant to this Paragraph 2 are hereinafter referred to as the “Guaranteed Obligations.”

Guarantor represents and warrants to Holder as follows: [describe relationship of Guarantor to Maker]. In that regard, Guarantor agrees that Holder’s agreement to make the Loan to Maker is of substantial and material benefit to Guarantor and further agrees as follows:

(a) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding (i) any modification, agreement or stipulation between Maker and Holder, or their respective successors and assigns, with respect to the Loan Documents or the obligations encompassed thereby, including, without limitation, the Guaranteed Obligations; (ii) any modification of or amendments or addenda to the Plans and Specifications, General Contract or any Subcontract; (iii) Holder’s waiver of or failure to enforce any of the terms, covenants or conditions contained in the Loan Documents or in any modification thereof; (iv) any discharge or release of Maker or

COMPLETION GUARANTY

-1-

any other guarantor from any liability with respect to the Guaranteed Obligations; (v) any discharge, release, exchange or subordination of any real or personal property then held by Holder as security for the performance of the Guaranteed Obligations; (vi) any additional security taken for the Guaranteed Obligations, whether real or personal property; (vii) any foreclosure or otherwise realization on any security for the Guaranteed Obligations, regardless of the effect upon Guarantor's subrogation, contribution or reimbursement rights against Maker or any other guarantor; and (viii) any additional loans or financial accommodations to Maker.

(b) Guarantor's liability under this Guaranty shall continue until all sums due under the Note have been paid in full and until all Guaranteed Obligations to Holder have been satisfied, and shall not be reduced by virtue of any payment by Maker of any amount due under the Note or under any of the Loan Documents or by Holder's recourse to any collateral or security.

(c) Guarantor warrants and represents to Holder that Guarantor now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Loan Documents or referred to therein, the value of the assets owned or to be acquired by Maker, Maker's financial status and its ability to pay and perform the Guaranteed Obligations owed to Holder. Guarantor further warrants and represents that Guarantor has reviewed and approved copies of the Loan Documents and is fully informed of the remedies Holder may pursue, with or without notice to Maker, in the event of default under the Note or other Loan Documents. So long as any of the Guaranteed Obligations remains unsatisfied or owing to Holder, Guarantor shall keep fully informed as to all aspects of Maker's financial condition and the performance of the Guaranteed Obligations.

(d) Guarantor acknowledges and agrees that Guarantor may be required to perform the Guaranteed Obligations in accordance with the terms hereof notwithstanding the fact that the Loan has fully matured, that the outstanding principal balance thereof is fully due and payable and that Maker is in default of its obligation to pay the full amount due under the Note on the maturity thereof.

4. The liability of Guarantor under this Guaranty is a guaranty of payment and performance and not of collectability, and is not conditioned or contingent upon the genuineness, validity, regularity or enforceability of the Loan Documents or other instruments relating to the creation or performance of the Guaranteed Obligations or the pursuit by Holder of any remedies which it now has or may hereafter have with respect thereto under the Loan Documents, at law, in equity or otherwise. Guarantor agrees that Guarantor shall be liable even if Maker had no liability at the time of execution of any of the Loan Documents or thereafter ceases to be liable. Guarantor hereby agrees that Guarantor's liability may be larger in amount and more burdensome than that of Maker. Guarantor's liability hereunder shall not be limited or affected in any way by any impairment or any diminution or loss of value of any security or collateral for the Loan, whether caused by hazardous substances or otherwise, Holder's failure to perfect a security interest in such security or collateral or any disability or other defense of Maker or any other guarantor.

5. Guarantor hereby waives to the extent permitted by law: (i) all notices to Guarantor, to Maker, or to any other person, including but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the Guaranteed Obligations owed to Holder and, except to the extent set forth in Paragraph 7 hereof, enforcement of any right or remedy with respect thereto, and notice of any other matters relating thereto; (ii) diligence and demand of payment, presentment, protest, dishonor and notice of dishonor; (iii) any statute of limitations affecting Guarantor's liability hereunder or the enforcement thereof; and (iv) all principles or provisions of law which conflict with the terms of this Guaranty. Guarantor further agrees that Holder may enforce this Guaranty upon the occurrence of an Event of Default under the Note or the Loan Documents (as Event of Default is defined therein), notwithstanding the existence of any dispute between Maker and Holder with respect to the existence of said Event of Default or performance of the Guaranteed Obligations or any counterclaim, set-off or other

COMPLETION GUARANTY

-2-

claim which Maker may allege against Holder with respect thereto. Moreover, Guarantor agrees that Guarantor's obligations shall not be affected by any circumstances which constitute a legal or equitable discharge of a guarantor or surety.

6. Guarantor agrees that Holder may enforce this Guaranty without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Maker or any other guarantor. Guarantor hereby waives the right to require Holder to proceed against Maker, to proceed against any other guarantor, to foreclose any lien on any real or personal property, to exercise any right or remedy under the Loan Documents, to draw upon any letter of credit issued in connection herewith, or to pursue any other remedy or to enforce any other right.

7. (a) Guarantor agrees that nothing contained herein shall prevent Holder from suing on the Note or from exercising any rights available to it thereunder or under any of the Loan Documents and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of Guarantor. Guarantor understands that the exercise by Holder of certain rights and remedies contained in the Loan Documents may affect or eliminate Guarantor's right of subrogation against Maker and that Guarantor may therefore incur a partially or totally non-reimbursable liability hereunder; nevertheless, Guarantor hereby authorizes and empowers Holder to exercise, in its sole discretion, any rights and remedies, or any combination thereof, which may then be available to Holder, since it is the intent and purpose of Guarantor that the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances. Notwithstanding any foreclosure of the lien of any deed of trust or security agreement with respect to any or all of the real or personal property secured thereby, whether by the exercise of the power of sale contained therein, by an action for judicial foreclosure or by an acceptance of a deed in lieu of foreclosure, Guarantor shall remain bound under this Guaranty. Guarantor agrees that Holder's exercise of certain of such rights and remedies (such as a nonjudicial foreclosure sale) may affect or eliminate Guarantor's right of subrogation or recovery against Maker. Guarantor expressly waives any defense which, if it had not given this waiver, it might otherwise have to a judgment against it following a nonjudicial foreclosure sale, for any portion of the indebtedness guaranteed herein. Without limiting the generality of the foregoing, Guarantor expressly waives any and all benefits and defenses under (a) California Code of Civil Procedure ("CCP") Section 580a, which if it had not given this waiver, would otherwise limit its liability after a nonjudicial foreclosure sale to the difference between the obligations guaranteed herein and the fair market value of the property or interest sold at such nonjudicial foreclosure sale, (b) CCP Section 580b and 580d, which if it had not given this waiver, would otherwise limit Holder's right to recover a deficiency judgment with respect to purchase money obligations and after a nonjudicial foreclosure sale, respectively and (c) CCP Section 726 which, if it had not given this waiver, among other things, would otherwise require Holder to exhaust all of its security before personal judgment may be obtained for deficiency.

(b) Guarantor agrees that Guarantor shall have no right of subrogation against Maker, no right of subrogation against any collateral or security provided for in the Loan Documents and no right of contribution against any other guarantor unless and until all Guaranteed Obligations have been satisfied, and Holder has released, transferred or disposed of all of its rights, title and interest in any collateral or security. To the extent the waiver of Guarantor's rights of subrogation, reimbursement and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, Guarantor further agrees that Guarantor's rights of subrogation and reimbursement against Maker and Guarantor's rights of subrogation against any collateral or security shall be junior and subordinate to any rights Holder may have against Maker and to all rights, title and interest Holder may have in such collateral or security, and Guarantor's rights of contribution against any other guarantor shall be junior and subordinate to any rights Holder may have against such other guarantor. Holder may use, sell or dispose of any item of collateral or security as it sees fit without regard to Guarantor's subrogation and contribution rights, and upon disposition or sale, Guarantor's rights of subrogation and contribution shall terminate. With respect

COMPLETION GUARANTY

-3-

to the foreclosure of any security interest in any personal property collateral then securing the Guaranteed Obligations, Holder agrees to give Guarantor five (5) days' prior written notice, in the manner set forth in Paragraph 9 hereof, of any sale or disposition of any such personal property collateral, other than collateral which is perishable, threatens to decline speedily in value, is of a type customarily sold on a recognized market, or is cash, cash equivalents, certificates of deposit or the like.

(c) Guarantor's sole right with respect to any such foreclosure of real or personal property collateral shall be to bid at such sale in accordance with applicable law. Guarantor acknowledges and agrees that Holder may also bid at any such sale and in the event such collateral is sold to Holder in whole or in partial satisfaction of the Guaranteed Obligations (or any portion thereof), Guarantor shall have no further right or interest with respect thereto. Notwithstanding anything to the contrary contained herein, no provision of this Guaranty shall be deemed to limit, decrease, or in any way to diminish any rights of set-off Holder may have with respect to any cash, cash equivalents, certificates of deposit, letters of credit or the like which may now or hereafter be deposited with Holder by Maker.

(d) To the extent any dispute exists at any time between Guarantor and any other guarantor as to Guarantor's right to contribution or otherwise, Guarantor agrees to indemnify, defend and hold Holder harmless from and against any loss, damage, claim, demand, cost or any other liability (including reasonable attorneys' fees and costs) Holder may suffer as a result of such dispute.

(e) So long as any Guaranteed Obligations shall be owing to Holder, Guarantor shall not, without the prior written consent of Holder, commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against Maker. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any case, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Maker or by any defense which Maker may have by reason of the order, decree or decision of any court or administrative body resulting from any such case. Holder shall have the sole right to accept or reject any plan on behalf of Guarantor proposed in such case and to take any other action which Guarantor would be entitled to take, including, without limitation, the decision to file or not file a claim. Guarantor acknowledges and agrees that any interest on the Guaranteed Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on any such portion of the Guaranteed Obligations if said proceedings had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of the parties that the Guaranteed Obligations should be determined without regard to any rule or law or order which may relieve Maker of any portion of such Guaranteed Obligations. Guarantor hereby permits any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Holder, or allow the claim of Holder in respect of, any such interest accruing after the date on which such proceeding is commenced. Guarantor hereby assigns to Holder Guarantor's right to receive any payments from any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person by way of dividend, adequate protection payment or otherwise. If all or any portion of the Guaranteed Obligations is paid or performed by Maker, the obligations of Guarantor hereunder shall continue and remain in full force and effect in the event that all or any part of such payment(s) or performance(s) is avoided or recovered directly or indirectly from Holder as a preference, fraudulent transfer or otherwise in such case irrespective of payment in full of all obligations under the Loan Documents.

8. (a) Guarantor warrants and represents that any financial statements of Guarantor heretofore delivered to Holder are true and correct in all respects. Such statements were prepared in accordance with generally accepted accounting principles, consistently applied, and fairly present the financial position of Guarantor as of the date thereof. Guarantor further warrants and represents that no material adverse change has occurred in Guarantor's financial position since the date of such statements.

COMPLETION GUARANTY

(b) Guarantor covenants and agrees to provide Holder, within ninety (90) days after the end of each fiscal year, with financial statements, including a balance sheet, an income statement, a statement of changes in financial position and such other statements as may be required by Holder, prepared in accordance with generally accepted accounting practices consistently applied and certified as true and complete without qualification by Guarantor or, if required by Holder, a certified public accountant. Holder shall receive unaudited financial statements of Guarantor within sixty (60) days after the end of each fiscal year. Guarantor further covenants and agrees to immediately notify Holder of any material adverse change in Guarantor's financial status.

9. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing (at the addresses set forth below) and shall be given by any of the following means: (a) personal service (including service by overnight courier service); (b) electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by personal service or by registered or certified, first class mail, return receipt requested); or (c) registered or certified, first class mail, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as provided above. Any notice, demand or request sent pursuant to either subsection (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, and, if sent pursuant to subsection (c) shall be deemed received five (5) days following deposit in the mail.

To Guarantor: _____
 With a copy to: _____
 To Holder: _____
 With a copy to: _____

10. Guarantor represents and warrants to Holder as follows:

(a) No consent of any other person, including, without limitation, any creditors of Guarantor, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by Guarantor in connection with this Guaranty or the execution, delivery, performance, validity or enforceability of this Guaranty and all obligations required hereunder. This Guaranty has been duly executed and delivered by Guarantor, and constitutes the legally valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms.

(b) The execution, delivery and performance of this Guaranty will not violate any provision of any existing law or regulation binding on Guarantor, or any order, judgment, award or decree of any court, arbitrator or governmental authority *154 binding on Guarantor, or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which Guarantor is a party or by which Guarantor or any of Guarantor's assets may be bound, and will not result in, or require, the creation or imposition of any lien on any of Guarantor's property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

11. Guarantor hereby grants Holder a security interest in any personal property of Maker in which Guarantor hereafter acquires any right, title or interest. Guarantor agrees that such security interest shall be additional security for the obligations hereby guaranteed. Such security interest shall be superior to any right of Guarantor in such personal property until all sums due under the Note or other Loan Documents have been repaid in full and all Guaranteed Obligations have been fully satisfied.

12. Upon the occurrence of an Event of Default under the Loan Documents, in addition to all of Holder's other rights hereunder and under the Loan Documents, Holder shall have the option, to be exercised in its sole discretion, to either require Guarantor to complete the Project, to complete the Project

COMPLETION GUARANTY

-5-

itself or to cause the Project to be completed by a third party. In the event that Holder elects to complete the Project itself or to cause a third party to complete the Project, Guarantor shall pay to Holder, immediately upon demand therefor, an amount equal to the difference between the actual costs reasonably incurred by Holder in completing the Project, including, without limitation, all licensing fees, permitting fees, amounts payable under general construction contract and all subcontracts, and amounts payable to any architect, engineer or other consultant engaged in connection with the construction of the Project (the "Actual Costs"), minus the sum of the undisbursed Loan proceeds that are allocated to Project Costs in the Budget as of the date Holder takes title to the Improvements through judicial or nonjudicial foreclosure or deed in lieu thereof and that are directly related to the construction of the Improvements (the "Undisbursed Loan"). For purposes of this Paragraph 11 the term "Project Costs" shall not include any amounts allocated in the Budget for interest, operating deficits, leasing commissions, marketing expenses, tenant concessions, real estate taxes and insurance, finders' fees, legal fees not directly related to construction of the Project or indirect cost contingencies not directly related to construction of the Project. In the event Holder elects to require Guarantor to complete the Project, upon the full and indefeasible performance of all of the Guaranteed Obligations, Holder shall pay to Guarantor an amount, up to the amount of the Undisbursed Loan, equal to the cost actually and reasonably incurred by Guarantor in completing construction in accordance with the terms hereof, but in no event shall such payment exceed the Undisbursed Loan.

13. Holder may assign this Guaranty with any Loan Document, without in any way affecting Guarantor's liability hereunder. This Guaranty shall be binding upon Guarantor, Guarantor's heirs, representatives, administrators, executors, successors and assigns and shall inure to the benefit of and shall be enforceable by Holder, its successors, endorsees and assigns. As used herein, the singular shall include the plural, and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

14. In the event of any dispute or litigation regarding the enforcement or validity of this Guaranty, Guarantor shall be obligated to pay all charges, costs and expenses (including reasonable attorneys' fees) incurred by Holder, whether or not any action or proceeding is commenced regarding such dispute and whether or not such litigation is prosecuted to judgment.

15. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF _____.

16. No provision of this Guaranty may be changed, waived, revoked or amended without Holder's prior written consent. Every provision of this Guaranty is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

17. This Guaranty may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same guaranty with the same effect as if all parties had signed the same signature page. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty and re-attached to any other counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages.

18. This Guaranty embodies the entire agreement among the parties hereto with respect to the matters set forth herein, and supersedes all prior agreements among the parties with respect to the matters set forth herein. No course of prior dealing among the parties, no usage of trade, and no parol or extrinsic evidence of any nature shall be used to supplement, modify or vary any of the terms hereof. There are no conditions to the full effectiveness of this Guaranty. No failure or delay on the part of Holder to exercise any power, right or privilege under this Guaranty shall impair any such power, right or privilege, or be construed to be a waiver of any default or an acquiescence therein, nor shall any single or partial exercise

COMPLETION GUARANTY

-6-

of such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

19. This Guaranty is in addition to all other guaranties of Guarantor and any other guarantors of Maker's obligations to Holder.

20. THE UNDERSIGNED GUARANTOR ACKNOWLEDGES THAT GUARANTOR HAS BEEN AFFORDED THE OPPORTUNITY TO READ THIS DOCUMENT CAREFULLY AND TO REVIEW IT WITH AN ATTORNEY OF GUARANTOR'S CHOICE BEFORE SIGNING IT. GUARANTOR ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE MEANING AND EFFECT OF THIS DOCUMENT BEFORE SIGNING IT.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

Note: This form should not be relied upon for the appropriate waivers in any jurisdiction.

COMPLETION GUARANTY

-7-

GUARANTY OF REQUIRED EQUITY

THIS GUARANTY OF REQUIRED EQUITY (this “Guaranty”) is executed as of _____, by _____ (“Guarantor”), for the benefit of _____, in its capacity as Administrative Agent for and on behalf of the Lenders from time to time party to the Loan Agreement defined below (together with its successors and/or assigns, “Administrative Agent”).

RECITALS:

WHEREAS, pursuant to that certain Loan Agreement dated of even date herewith among _____, (“Borrower”), the Lenders from time to time party thereto, and Administrative Agent (as the same may be amended, the “Loan Agreement”), Lender has agreed to make a Loan to Borrower on the terms and conditions described therein; capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement;

WHEREAS, _____, owns an indirect interest in Borrower of 10%;

WHEREAS, Guarantor is the manager of _____;

WHEREAS, _____, is the sole member of _____ and Guarantor is the managing trustee of the _____;

WHEREAS, _____ are the current beneficiaries under the _____ and are the children of Guarantor;

WHEREAS, Guarantor has determined that it is in Guarantor’s best interest to execute this Guaranty to facilitate the Loan to Borrower, which Loan will provide significant benefit to Guarantor and Guarantor’s children; and

WHEREAS, Lender is not willing to make the Loan to Borrower unless Guarantor executes and delivers this Guaranty.

NOW, THEREFORE, as an inducement to Lender to make the Loan to Borrower, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Guaranty of Obligation.

(a) Guarantor hereby irrevocably and unconditionally guarantees to Administrative Agent (for the benefit of the Lenders) the payment and performance of the Guaranteed Obligations as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is fully and personally liable for the Guaranteed Obligations as a primary obligor as set forth herein. As used herein, the term “Guaranteed Obligations” means the payment of the Required Equity (as defined in the Loan Agreement) pursuant to Section ____ of the Loan Agreement.

GUARANTY OF REQUIRED EQUITY

- 1 -

(b) Guarantor acknowledges and agrees that the unpaid amount of the Guaranteed Obligations as described in this Section 1, if not paid when due pursuant to this Guaranty and the other Loan Documents, shall, at Administrative Agent's election in its sole and absolute discretion, be deemed to be added to and form a part of the Debt for all purposes under the Loan Documents (it being agreed that neither Administrative Agent nor Lender shall be required to demonstrate that it has suffered a Loss in such amount in order to recover such amounts from Guarantor). For the avoidance of doubt, Guarantor's obligation to pay the unpaid amount of the Guaranteed Obligations as described in this Section 1 shall survive any foreclosure or the giving of any deed-in-lieu of foreclosure with respect to the Property, and shall not be reduced or limited by any repayment of the Loan or by any amount bid by Administrative Agent in connection with any foreclosure under the Loan Documents. Guarantor acknowledges and agrees that its obligations under this Guaranty to pay to Administrative Agent the unpaid amount of the Guaranteed Obligations as described in this Section 1 are separate and distinct from any obligation of Borrower to repay the Debt, and that such obligation does not constitute a guaranty of the Loan or of any of Borrower's obligations with respect to the Loan except to the extent that such unpaid amount of the Guaranteed Obligations as described in this Section 1 are actually added to and form a part of the Debt as provided above.

2. Nature of Guaranty. This Guaranty is an irrevocable, absolute, continuing guaranty of payment and performance and not a guaranty of collection. This Guaranty may not be revoked by Guarantor and if Guarantor is a natural person, shall continue to be effective after Guarantor's death (in which event this Guaranty shall be binding upon Guarantor's estate and heirs).

3. Waivers. Guarantor agrees and acknowledges that it has received copies of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to Borrower, (b) acceptance of this Guaranty, (c) any amendment or extension of the Loan Documents, (d) the execution and delivery by Borrower and Administrative Agent and/or Lender of any other loan or credit agreement or of Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Property, (e) the occurrence of any Default or Event of Default, (f) Administrative Agent's transfer or disposition of the Guaranteed Obligations, or any part thereof, to any Person acquiring all or any portion of (or any interest in) the Loan, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any collateral for the Guaranteed Obligations, (h) protest, proof of non-payment or default by Borrower, and (i) any other action at any time taken or omitted by Lender or Administrative Agent, and, generally, all demands and notices of every kind in connection with this Guaranty, the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Guaranteed Obligations, except such notices and demands expressly required in the Loan Documents. In addition Guarantor hereby expressly waives: (i) any right to revoke this Guaranty; (ii) any right to require Lender or Administrative Agent to do any of the following before Guarantor is obligated to pay or perform the Guaranteed Obligations or before Administrative Agent may proceed against Guarantor: (A) sue or exhaust remedies against Borrower or any other person liable for the Guaranteed Obligations or any portion thereof; (B) sue on an accrued right of action in respect of any of the Guaranteed Obligations or bring any other action, exercise any other right, or exhaust any other remedy; (C) enforce rights against Borrower's assets or the collateral pledged by Borrower to secure the Guaranteed Obligations; (D) join Borrower or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty; or (E) mitigate damages or take any other action to reduce, collect or enforce the

GUARANTY OF REQUIRED EQUITY

- 2 -

Guaranteed Obligations; (iii) any right relating to the timing, manner or conduct of Administrative Agent's enforcement of rights against Borrower's assets or the collateral pledged by Borrower to secure the Guaranteed Obligations; (iv) if Guarantor and/or Borrower (or any other person) have each pledged assets to secure the Guaranteed Obligations, any right to require Lender or Administrative Agent to proceed first against collateral pledged by Borrower (or any other person) before proceeding against the collateral pledged by Guarantor; (v) promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, demand for payment or performance, acceptance or notice of acceptance of this Guaranty, presentment, notice of protest, notice of dishonor, notice of the incurring by Borrower of additional indebtedness, notice of any suit or other action by Administrative Agent against Borrower or any other person, any notice to any person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Guaranteed Obligations and this Guaranty; and (vi) any and all rights it may now or hereafter have under any agreement, at law or in equity (including, without limitation, any law subrogating the Guarantor to the rights of Lender or Administrative Agent), to assert any claim against or seek contribution, indemnification or any other form of reimbursement from Borrower or any other party liable for payment of any or all of the Guaranteed Obligations for any payment made by Guarantor under or in connection with this Guaranty or otherwise prior to satisfaction in full of Guarantor's obligations hereunder (except for only those obligations which, by their express terms, survive indefeasible repayment of the Debt).

4. Payment of Expenses. In the event that Guarantor should fail to timely perform any provisions of this Guaranty, Guarantor shall, within ten (10) days of written demand by Administrative Agent, pay Administrative Agent all out-of-pocket costs and expenses (including court costs and reasonable attorneys' fees) actually incurred by Lender or Administrative Agent in the enforcement hereof or the preservation of Lender or Administrative Agent's rights hereunder, together with interest thereon at the Default Rate from the date of demand by Administrative Agent until the date of payment to Administrative Agent. Any amounts payable to Administrative Agent hereunder shall be due and payable on written demand and, if not paid within ten (10) days of such demand therefor, shall bear interest at the Default Rate from the date payment was due. This Section 4 shall survive the payment and performance of the Guaranteed Obligations.

5. Effect of Bankruptcy. In the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law, or any judgment, order or decision thereunder, Lender or Administrative Agent must rescind or restore any payment, or any part thereof, received by Lender or Administrative Agent in satisfaction of the Guaranteed Obligations, as set forth herein, any prior release or discharge from the terms of this Guaranty given to Guarantor by Lender or Administrative Agent shall be without effect, Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment has been due but not made at such time, and this Guaranty shall remain in full force and effect. It is the intention of Borrower and Guarantor that Guarantor's obligations hereunder shall not be discharged except by Guarantor's performance of such obligations and then only to the extent of such performance.

6. No Discharge. Guarantor agrees that its obligations under this Guaranty shall not be released, diminished, or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including without limitation rights to notice) which Guarantor might otherwise have as a result of or in connection with any of the following: (a) any

GUARANTY OF REQUIRED EQUITY

- 3 -

modification, extension, or increase of all or any part of the Guaranteed Obligations or the Loan Documents; (b) any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender or Administrative Agent to Borrower or Guarantor; (c) the insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Borrower, Guarantor or any other party at any time liable for the payment of all or part of the Guaranteed Obligations, or any dissolution of Borrower or Guarantor, or any payment by Borrower to Lender or Administrative Agent being held to constitute a preference under bankruptcy laws or for any reason Lender or Administrative Agent is required to refund such payment or pay such amount to Borrower or someone else pursuant to any applicable Federal or State bankruptcy or insolvency law relating to the bankruptcy or insolvency of Borrower or Guarantor; (d) any sale, lease or transfer of any or all of the assets of Borrower or Guarantor, or any changes in the shareholders, partners or members of Borrower or Guarantor; or any reorganization of Borrower or Guarantor, or the reorganization, merger or consolidation of Borrower into or with any other corporation or entity; (e) the invalidity, illegality or unenforceability of all or any part of the Guaranteed Obligations, or any document or agreement executed in connection with or evidencing the Guaranteed Obligations, for any reason whatsoever, including without limitation the fact that (i) the Guaranteed Obligations, or any part thereof, exceeds the amount permitted by law, (ii) the act of creating the Guaranteed Obligations or any part thereof is ultra vires, (iii) the officers or representatives executing the Loan Documents or otherwise creating the Guaranteed Obligations acted in excess of their authority, (iv) the Guaranteed Obligations violate applicable usury laws, (v) the Borrower (or any other Person) has valid defenses (except the defense of payment or performance of the applicable Guaranteed Obligation), claims or offsets (whether at law, in equity or by agreement) which render the Guaranteed Obligations wholly or partially reduced or uncollectible from Borrower (whether such right of offset, claim or defense arises in connection with the Guaranteed Obligations, the transactions creating the Guaranteed Obligations or otherwise), (vi) the creation, performance or repayment of the Guaranteed Obligations (or the execution, delivery and performance of any document or instrument representing part of the Guaranteed Obligations or executed in connection with the Guaranteed Obligations, or given to secure the repayment of the Guaranteed Obligations) is illegal, uncollectible or unenforceable, or (vii) the Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations or any part thereof for any reason; (f) any full or partial release of the liability of Borrower for any part of the Guaranteed Obligations, or of any co-guarantors, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Guaranteed Obligations, or any part thereof, it being recognized, acknowledged and agreed by Guarantor that Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support of any other party, and Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Guaranteed Obligations, or that Lender or Administrative Agent will look to other Persons to pay or perform the Guaranteed Obligations; (g) the taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Guaranteed Obligations; (h) any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including without limitation negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or

GUARANTY OF REQUIRED EQUITY

- 4 -

assuring or securing payment of, all or any part of the Guaranteed Obligations; (i) the failure of Lender or Administrative Agent or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security, including but not limited to any neglect, delay, omission, failure; or (j) any other action taken or omitted to be taken with respect to the Loan Documents, the Guaranteed Obligations, or the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will be required to pay the Guaranteed Obligations pursuant to the terms hereof, it is the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay the Guaranteed Obligations when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever, whether contemplated or un contemplated, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Guaranteed Obligations (except for only those obligations which, by their express terms, survive indefeasible repayment of the Debt).

7. Representations and Warranties. To induce Administrative Agent and Lender to enter into the Loan Documents, Guarantor represents and warrants to Administrative Agent and Lender as follows: (a) Guarantor has received, or will receive, direct or indirect benefit from the making of the Loan to Borrower; (b) Guarantor is familiar with the financial condition of the Borrower and is familiar with the value of any and all collateral intended to be created as security for the payment of the Guaranteed Obligations (however, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty); (c) neither Administrative Agent nor any Lender or other party has made any representation, warranty or statement to Guarantor in order to induce the Guarantor to execute this Guaranty; (d) as of the date hereof, giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is solvent, and has assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and has property and assets sufficient to satisfy and repay its obligations and liabilities; and (e) this Guaranty is a legal and binding obligation of Guarantor and is enforceable in accordance with its terms, except as limited by general principles of equity and bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights. All representations and warranties made by Guarantor herein shall survive the execution hereof.

8. Financial Covenants; Reporting. Section 8 of the Recourse Guaranty is hereby incorporated as part of this Guaranty with the same effect as if set forth in full herein.

9. Subordination of All Guarantor Claims. In the event of receivership, bankruptcy, reorganization, arrangement, debtor's relief, or other insolvency proceedings involving Guarantor as debtor, Administrative Agent and Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims (as defined below). Guarantor hereby assigns such dividends and payments to Administrative Agent. Should Administrative Agent receive, for application upon the Guaranteed Obligations, any such dividend or payment which is otherwise payable to Guarantor, and which, as between Borrower and Guarantor, shall constitute a credit upon the Guarantor Claims, then upon payment to Administrative Agent in full of the Guaranteed Obligations, Guarantor shall become subrogated to the rights of Administrative Agent to the extent that such payments to Administrative Agent on the Guarantor Claims have contributed toward the liquidation of the

GUARANTY OF REQUIRED EQUITY

- 5 -

Guaranteed Obligations, and such subrogation shall be with respect to that proportion of the Guaranteed Obligations which would have been unpaid if Administrative Agent had not received dividends or payments upon the Guarantor Claims. As used herein, the term “Guarantor Claims” shall mean all debts and liabilities of Borrower to Guarantor, whether such debts and liabilities now exist or are hereafter incurred or arise (including, without limitation, all rights and claims of Guarantor against Borrower (arising as a result of subrogation or otherwise) as a result of Guarantor’s payment of all or a portion of the Guaranteed Obligations). In the event that Guarantor should receive any payment which is prohibited by this Guaranty, Guarantor agrees to hold such payment in trust for Administrative Agent and promptly pay the same to Administrative Agent to the extent of any unpaid Guaranteed Obligations. Guarantor agrees that until the Debt is repaid in full and Guarantor’s obligations hereunder have been paid and performed in full, any liens, security interests, judgment liens, charges or other encumbrances upon Borrower’s assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any liens, security interests, judgment liens, charges or other encumbrances upon Borrower’s assets securing payment of the Guaranteed Obligations, regardless of whether such encumbrances in favor of Guarantor or Administrative Agent presently exist or are hereafter created or attached. Without the prior written consent of Administrative Agent, until the Debt is indefeasibly repaid in full and Guarantor’s obligations hereunder have been indefeasibly paid and performed in full (except for only those obligations which, by their express terms, survive indefeasible repayment of the Debt), Guarantor shall not (a) exercise or enforce any creditor’s right it may have against Borrower or (b) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including without limitation the commencement of, or joinder in, any liquidation, bankruptcy, rearrangement, debtor’s relief or insolvency proceeding) to enforce any liens, mortgages, deeds of trust, security interests, collateral rights, judgments or other encumbrances on assets of Borrower held by Guarantor.

10. **GOVERNING LAW; VENUE. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN §§ 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT TO THE EXTENT THAT THE APPLICABILITY OF ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, IN WHICH CASE SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST ADMINISTRATIVE AGENT, LENDER OR GUARANTOR ARISING OUT OF OR RELATING TO THIS GUARANTY MAY AT ADMINISTRATIVE AGENT’S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND GUARANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. GUARANTOR DOES HEREBY DESIGNATE AND APPOINT:**

GUARANTY OF REQUIRED EQUITY

- 6 -

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO GUARANTOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON GUARANTOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. GUARANTOR (I) SHALL GIVE PROMPT NOTICE TO ADMINISTRATIVE AGENT OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF LENDER OR ADMINISTRATIVE AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST GUARANTOR IN ANY OTHER JURISDICTION. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS GUARANTY.

11. WAIVER OF RIGHT TO TRIAL BY JURY. GUARANTOR, ADMINISTRATIVE AGENT, AND LENDER (BY THEIR ACCEPTANCE OF THIS GUARANTY) HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS GUARANTY, THE NOTE, THE LOAN AGREEMENT, THE SECURITY INSTRUMENT, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HERewith. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GUARANTOR, ADMINISTRATIVE AGENT, AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. THE PARTIES HERETO ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GUARANTOR.

12. Miscellaneous. All notices, consents, approvals and requests required or permitted hereunder shall be given (and shall be deemed effective) in the manner described in Section 8.10 of the Loan Agreement, and Guarantor's address for such purposes shall be the address of Guarantor set forth on the signature page hereof. No failure to exercise, and no delay in exercising, on the part of Lender or Administrative Agent, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however,

GUARANTY OF REQUIRED EQUITY

- 7 -

Guarantor may not assign any of its rights, powers, duties or obligations hereunder. This Guaranty embodies the entire agreement of Guarantor, Lender and Administrative Agent with respect to Guarantor's guaranty of the Guaranteed Obligations and supersedes any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof. There are no oral agreements between Guarantor, Lender and Administrative Agent. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable and all other provisions of this Guaranty shall remain in full force and effect. This Guaranty may be amended only by an instrument in writing executed by the party or an authorized representative of the party against whom such amendment is sought to be enforced. If Guarantor consists of more than one Person, the obligations and liabilities of each such Person shall be joint and several. This Guaranty may be executed in counterparts.

13. Intercreditor Agreement. Guarantor hereby acknowledges and agrees that any intercreditor agreement entered into between Administrative Agent and Mezzanine Loan Administrative Agent will be solely for the benefit of Administrative Agent and Mezzanine Loan Administrative Agent, and that none of Guarantor, Borrower, or Mezzanine Borrower shall be third-party beneficiaries (intended or otherwise) of any of the provisions therein, have any rights thereunder, or be entitled to rely on any of the provisions contained therein. Administrative Agent and Mezzanine Loan Administrative Agent have no obligation to disclose to Guarantor the contents of any such intercreditor agreement. Guarantor's obligations hereunder are and will be independent of any such intercreditor agreement and shall remain unmodified by the terms and provisions thereof.

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GUARANTY OF REQUIRED EQUITY

- 8 -

AMERICAN BANKRUPTCY INSTITUTE

EXECUTED as of the day and year first above written.

GUARANTOR:

NAME

Address for purposes of notice:

Name
Address
Address
Email

With a copy to:

Name
Address
Address
Email

GUARANTY OF REQUIRED EQUITY – SIGNATURE PAGE

Faculty

Brian L. Davidoff is chair of the Bankruptcy, Reorganization & Capital Recovery Practice Group at Greenberg Glusker Fields Claman & Machtinger LLP in Los Angeles and has provided reorganization and bankruptcy counsel for more than 30 years. He represents business debtors in reorganization plans, filing their bankruptcy cases and assisting in their decisions of whether to reorganize or liquidate. He also has represented lenders who have defaulted loans, buyers of assets from bankruptcy, indenture trustees, secured and unsecured creditors, creditors' committees and equity securityholders' and bondholders committees, as well as foreign representatives in ancillary proceedings. Mr. Davidoff is a frequent writer and speaker on cryptocurrency bankruptcies and has been involved in different aspects of cryptocurrency cases. He has provided media commentary to *Law360*, *The Guardian*, Bloomberg Law, *Forbes*, *Daily Journal*, *Los Angeles Business Journal*, *The Deal*, PUCK, WGN Radio Legal Face-Off and KNX In Depth. Mr. Davidoff has been recognized by *Chambers USA* each year since 2016, was selected as an *L.A. Times* Banking & Finance Visionary in 2022, and is selected annually to the *The Best Lawyers in America* and *Southern California Super Lawyers* lists. He currently serves as president of the American Board of Certification and is himself Board Certified in Business Bankruptcy Law. Mr. Davidoff received his law degree from the University of Witwatersrand in South Africa in 1978 and his LL.M. from the University of Miami in 1982.

Steven L. Green is the president of KGI Advisors, Inc. in Los Angeles and has more than 30 years of experience in business leadership, finance, operations and turnaround management. He co-founded Kibel Green in 1984. Mr. Green has led or participated in hundreds of operational and financial transitions, resulting in dramatic improvements to profitability, cash flow and capital structures. As CRO, he has overseen numerous transactions involving acquisition, sale or financing. Mr. Green previously served as president and led the successful turnarounds of four mid-market companies. He is a frequent speaker on a variety of operational and financial topics and holds a California Real Estate Broker license. Mr. Green is a past member and officer of the Young Presidents' Organization (YPO) and a current member of the World Presidents' Organization. He also serves on the advisory council to the University of Southern California's Entrepreneurship Program and lectures at the USC and LMU graduate and undergraduate business schools. Mr. Green received his B.S. in business from Northeastern University and his M.B.A. from the University of Southern California.

Alina Mardesich is a managing director at Hilco Corporate Finance in Los Angeles, where she provides CRE advisory services, including underwriting/valuation and developing financing strategies within HCF and other Hilco Global verticals, emphasizing raising capital (debt/equity). For nonperforming/distressed assets, she works with both capital and sponsor clients on repositioning and capital restructuring strategies. Ms. Mardesich's career focus has been on properties in transition, such as land, development, construction, adaptive reuse, and value-add in all asset classes throughout the U.S. Her notable projects/accolades include \$250MM+ in loans for the conversion of industrial warehouses to residential lofts in the Downtown Los Angeles Arts District, \$400MM+ in backbone infrastructure loans for various master-planned communities in California, and a zero-loss track record on over \$1.5B of loans funded. Previously, Ms. Mardesich spent 17 years as a construction lender with Oaktree Capital Management (current cycle) and Fremont Investment & Loan (previous cycle). She began her career at Arthur Anderson & Co. as a staff underwriter, then moved on to the JE

Robert Companies (a Goldman Whitehall Fund) as a portfolio analyst. During the Global Financial Crisis, she handled loan workouts at US Bank and managed a \$350MM portfolio of nonperforming loans. Ms. Mardesich received her B.S. in real estate and finance from the University of Southern California.

Aram Ordubegian is a partner with Arent Fox LLP in Los Angeles and chairs the firm's Cannabis Industry Practice Group. He also is West Coast Team Leader of the firm's Bankruptcy and Financial Restructuring Group. Mr. Ordubegian has broad-based reorganization and bankruptcy litigation and appellate experience in a wide area of insolvency matters from various perspectives, including representation of businesses and high-net-worth individuals facing financial distress, purchasers of assets, individual and corporate creditors, creditors' committees, trustees, and parties to out-of-court workout transactions with debtors before, during and after bankruptcies. He has advised businesses in connection with debt-restructuring, securitization, trust formation, acquisitions, divestitures and wind-downs in connection with financially distressed assets, and he has advised corporations, limited liability companies and partnerships on creditors' rights, governance and control issues. Mr. Ordubegian has represented a variety of high-income individuals, including business executives and insiders of insolvent corporations, real estate developers, physicians, and entertainment and sports industry members, in their pre-bankruptcy workout negotiations with creditors. Prior to joining Arent Fox, he was a partner at the bankruptcy boutique firm of Weinstein, Weiss & Ordubegian, LLP in Los Angeles, where he had practiced since 2000. From 1996-2000, he was an associate at Shapiro & Miles LLP (now Miles & Bauer LLP) of Costa Mesa, Calif., where he represented primarily secured creditors in bankruptcy cases. Mr. Ordubegian received his B.A. from California State University at Northridge and his J.D. from Loyola Law School.