COMMERCIAL REAL ESTATE LOAN GUARANTY ENFORCEMENT

OVERVIEW OF COMMERCIAL REAL ESTATE LOAN GUARANTIES AND THEIR PECULIARITIES

PRESENTED BY:

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I. EXAMPLES OF COMMERCIAL LOAN GUARANTIES

A. Payment Guaranties.

GUARANTY

(Payment)

This GUARANTY (Payment) (this “Guaranty”), dated as of _____________________, is executed by the undersigned (“Guarantor”), to and for the benefit of ______________________________________ (“Lender”).

RECITALS:

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, by and between _________________________ (“Borrower”) and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “Loan Agreement”), Lender is making a loan to Borrower in the original principal amount of __________________ and ___/100 Dollars ($________) (the “Mortgage Loan”), as evidenced by that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to the order of Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “Note”).

B. The Note will be secured by, among other things, a Security Instrument (as defined in the Loan Agreement) encumbering the real property described in the Security Instrument (the “Property”).

C. Guarantor has an economic interest in Borrower or will otherwise obtain a material financial benefit from the Mortgage Loan.

D. As a condition to making the Loan to Borrower, Lender requires that Guarantor execute this Guaranty.

NOW, THEREFORE, in order to induce Lender to make the Mortgage Loan to Borrower, and in consideration thereof, Guarantor agrees as follows:

AGREEMENTS:

1. Recitals.

The recitals set forth above are incorporated herein by reference as if fully set forth in the body of this Guaranty.
2. **Defined Terms.**

   Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.

3. **Guaranteed Obligations.**

   Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Lender the full and prompt payment and performance when due, whether at maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter, of:

   (a) the entire Indebtedness;

   (b) the payment and performance of all indemnity obligations of Borrower described in Section 3.02 (Personal Liability for Indemnity Obligations) of the Loan Agreement, including all of Borrower’s obligations under the Environmental Indemnity Agreement; and

   (c) all costs and expenses, including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses, incurred by Lender in enforcing its rights under this Guaranty.

4. **Survival of Guaranteed Obligations.**

   The obligations of Guarantor under this Guaranty shall survive any Foreclosure Event, and any recorded release or reconveyance of the Security Instrument or any release of any other security for any of the Indebtedness.

5. **Guaranty of Payment; Community Property.**

   Guarantor’s obligations under this Guaranty constitute a present and unconditional guaranty of payment and not merely a guaranty of collection. If Guarantor (or any Guarantor, if more than one) is a married person, and the state of residence of Guarantor or Guarantor’s spouse is a community property jurisdiction, Guarantor (or each such married Guarantor, if more than one) agrees that Lender may satisfy Guarantor’s obligations under this Guaranty to the extent of all Guarantor’s separate property and Guarantor’s interest in any community property.

6. **Obligations Unsecured; Cross-Default.**

   The obligations of Guarantor under this Guaranty shall not be secured by the Security Instrument or the Loan Agreement. However, a default under this Guaranty shall be an Event of Default under the Loan Agreement, and a default under this Guaranty shall entitle Lender to be able to exercise all of its rights and remedies under the Loan Agreement and other Loan Documents.

7. **Continuing Guaranty.**

   The obligations of Guarantor under this Guaranty shall be unconditional irrespective of the genuineness, validity, regularity or enforceability of any provision of this Guaranty, the Note,
the Loan Agreement, the Security Instrument or any other Loan Document. Guarantor agrees
that performance of the obligations hereunder shall be a primary obligation, shall not be subject
to any counterclaim, set-off, recoupment, abatement, deferment or defense based upon any claim
that Guarantor may have against Lender, Borrower, any other guarantor of the obligations
hereunder or any other person or entity, and shall remain in full force and effect without regard
to, and shall not be released, discharged or affected in any way by any circumstance or condition
(whether or not Guarantor shall have any knowledge thereof), including:

(a) any furnishing, exchange, substitution or release of any collateral securing
repayment of the Mortgage Loan, or any failure to perfect any lien in such collateral;

(b) any failure, omission or delay on the part of Borrower, Guarantor, any other
guarantor of the obligations hereunder or Lender to conform or comply with any term of any of
the Loan Documents or failure of Lender to give notice of any Event of Default;

(c) any action or inaction by Lender under or in respect of any of the Loan
Documents, any failure, lack of diligence, omission or delay on the part of Lender to perfect,
enforce, assert or exercise any lien, security interest, right, power or remedy conferred upon it in
any of the Loan Documents, or any other action or inaction on the part of Lender;

(d) any Bankruptcy Event, or any voluntary or involuntary bankruptcy, insolvency,
reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition,
receivership, liquidation, marshaling of assets and liabilities or similar events or proceedings
with respect to Guarantor or any other guarantor of the obligations hereunder, or any of their
respective property or creditors or any action taken by any trustee or receiver or by any court in
such proceeding;

(e) any merger or consolidation of Borrower into or with any entity or any sale, lease
or Transfer of any asset of Borrower, Guarantor or any other guarantor of the obligations
hereunder to any other Person;

(f) any change in the ownership of Borrower or any change in the relationship
between Borrower, Guarantor or any other guarantor of the obligations hereunder, or any
termination of such relationship;

(g) any release or discharge by operation of law of Borrower, Guarantor or any other
guarantor of the obligations hereunder, any obligation or agreement contained in any of the Loan
Documents; or

(h) any other occurrence, circumstance, happening or event, whether similar or
dissimilar to the foregoing, and whether seen or unforeseen, which otherwise might constitute a
legal or equitable defense or discharge of the liabilities of a guarantor or surety or which
otherwise might limit recourse against Borrower or Guarantor to the fullest extent permitted by
law.
8. Guarantor Waivers.

Guarantor hereby waives:

(a) the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty (and agrees that Guarantor’s obligations shall not be affected by any circumstances, whether or not referred to in this Guaranty, which might otherwise constitute a legal or equitable discharge of a surety or a guarantor);

(b) the benefits of any right of discharge under any and all statutes or other laws relating to guarantors or sureties and any other rights of sureties and guarantors;

(c) diligence in collecting the Indebtedness, presentment, demand for payment, protest and all notices with respect to the Loan Documents and this Guaranty which may be required by statute, rule of law or otherwise to preserve Lender’s rights against Guarantor under this Guaranty, including notice of acceptance, notice of any amendment of the Loan Documents, notice of the occurrence of any default or Event of Default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest and notice of the incurring by Borrower of any obligation or indebtedness; and

(d) all rights to require Lender to:

(1) proceed against or exhaust any collateral held by Lender to secure the repayment of the Indebtedness;

(2) proceed against or pursue any remedy it may now or hereafter have against Borrower or any guarantor, or, if Borrower or any guarantor is a partnership, any general partner of Borrower or general partner of any guarantor; or

(3) demand or require collateral security from Borrower, any other guarantor or any other Person as provided by applicable law or otherwise.

9. No Effect Upon Obligations.

At any time or from time to time and any number of times, without notice to Guarantor and without releasing, discharging or affecting the liability of Guarantor:

(a) the time for payment of the principal of or interest on the Indebtedness may be extended or the Indebtedness may be renewed in whole or in part;

(b) the rate of interest on or period of amortization of the Mortgage Loan or the amount of the Monthly Debt Service Payments payable under the Loan Documents may be modified;

(c) the time for Borrower’s performance of or compliance with any covenant or agreement contained in any Loan Document, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived;
(d) the maturity of the Indebtedness may be accelerated as provided in the Loan Documents;

(e) any or all payments due under the Loan Agreement or any other Loan Document may be reduced;

(f) any Loan Document may be modified or amended by Lender and Borrower in any respect, including an increase in the principal amount of the Mortgage Loan;

(g) any amounts under the Loan Agreement or any other Loan Document may be released;

(h) any security for the Indebtedness may be modified, exchanged, released, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Indebtedness;

(i) the payment of the Indebtedness or any security for the Indebtedness, or both, may be subordinated to the right to payment or the security, or both, of any other present or future creditor of Borrower;

(j) any payments made by Borrower to Lender may be applied to the Indebtedness in such priority as Lender may determine in its discretion; and

(k) any other terms of the Loan Documents may be modified as required by Lender.

10. Joint and Several (or Solidary) Liability.

If more than one Person executes this Guaranty as Guarantor, such Persons shall be liable for the obligations hereunder on a joint and several (solidary instead for purposes of Louisiana law) basis. Lender, in its discretion, may:

(a) to the extent permitted by applicable law, bring suit against Guarantor, or any one or more of the Persons constituting Guarantor, and any other guarantor, jointly and severally (solidarily instead for purposes of Louisiana law), or against any one or more of them;

(b) compromise or settle with any one or more of the Persons constituting Guarantor, or any other guarantor, for such consideration as Lender may deem proper;

(c) discharge or release one or more of the Persons constituting Guarantor, or any other guarantor, from liability or agree not to sue such Person; and

(d) otherwise deal with Guarantor and any guarantor, or any one or more of them, in any manner, and no such action shall impair the rights of Lender to collect from Guarantor any amount guaranteed by Guarantor under this Guaranty.

Nothing contained in this Section 10 shall in any way affect or impair the rights or obligations of Guarantor with respect to any other guarantor.
11. **Subordination of Affiliated Debt.**

Any indebtedness of Borrower held by Guarantor now or in the future is and shall be subordinated to the Indebtedness and any such indebtedness of Borrower shall be collected, enforced and received by Guarantor, as trustee for Lender, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

12. **Subrogation.**

Guarantor shall have no right of, and hereby waives any claim for, subrogation or reimbursement against Borrower or any general partner of Borrower by reason of any payment by Guarantor under this Guaranty, whether such right or claim arises at law or in equity or under any contract or statute, until the Indebtedness has been paid in full and there has expired the maximum possible period thereafter during which any payment made by Borrower to Lender with respect to the Indebtedness could be deemed a preference under the Insolvency Laws.

13. **Voidable Transfer.**

If any payment by Borrower is held to constitute a preference under any Insolvency Laws or similar laws, or if for any other reason Lender is required to refund any sums to Borrower, such refund shall not constitute a release of any liability of Guarantor under this Guaranty. It is the intention of Lender and Guarantor that Guarantor’s obligations under this Guaranty shall not be discharged except by Guarantor’s performance of such obligations and then only to the extent of such performance. If any payment by any Guarantor should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors’ rights, including provisions of the Insolvency Laws relating to a Voidable Transfer, and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the advice of its counsel, then the obligations guaranteed hereunder shall automatically be revived, reinstated and restored by the amount of such Voidable Transfer or the amount of such Voidable Transfer that Lender is required or elects to repay or restore, including all reasonable costs, expenses and legal fees incurred by Lender in connection therewith, and shall exist as though such Voidable Transfer had never been made, and any other guarantor, if any, shall remain liable for such obligations in full.

14. **Credit Report/Credit Score.**

Guarantor acknowledges and agrees that Lender is authorized, no more frequently than once in any twelve (12) month period, to obtain a credit report (if applicable) on Guarantor, the cost of which shall be paid for by Guarantor. Guarantor acknowledges and agrees that Lender is authorized to obtain a Credit Score (if applicable) for Guarantor at any time at Lender’s expense.

15. **Financial Reporting.**

Guarantor shall deliver to Lender such Guarantor financial statements as required by Section 8.02 (Books and Records; Financial Reporting – Covenants) of the Loan Agreement.
16. Further Assurances.

Guarantor acknowledges that Lender (including its successors and assigns) may sell or transfer the Mortgage Loan, or any interest in the Mortgage Loan.

(a) Guarantor shall:

(1) do anything necessary to comply with the requirements of Lender or any Investor of the Mortgage Loan or provide, or cause to be provided, to Lender or any Investor of the Mortgage Loan, at Borrower’s and Guarantor’s cost and expense, such further documentation or information required by Lender or Investor, in order to enable:

(A) Lender to sell the Mortgage Loan to such Investor;

(B) Lender to obtain a refund of any commitment fee from any such Investor; or

(C) any such Investor to further sell or securitize the Mortgage Loan;

(2) confirm that Guarantor is not in default under this Guaranty or in observing any of the covenants or agreements contained in this Guaranty (or, if Guarantor is in default, describing such default in reasonable detail); and

(3) execute and deliver to Lender and/or any Investor such other documentation, including any amendments, corrections, deletions or additions to this Guaranty as is required by Lender or such Investor.

(b) Nothing in this Section 16 shall require Guarantor to do any further act that has the effect of:

(1) changing the essential economic terms of the Mortgage Loan set forth in the related commitment letter between Borrower and Lender; or

(2) imposing on Borrower or Guarantor greater personal liability under the Loan Documents than that set forth in the related commitment letter between Borrower and Lender.

17. Successors and Assigns.

Lender may assign its rights under this Guaranty in whole or in part and, upon any such assignment, all the terms and provisions of this Guaranty shall inure to the benefit of such assignee to the extent so assigned. Guarantor may not assign its rights, duties and obligations under this Guaranty, in whole or in part, without Lender’s prior written consent and any such assignment shall be deemed void ab initio. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors and assigns of such parties.
18. Final Agreement.

Guarantor acknowledges receipt of a copy of each of the Loan Documents and this Guaranty. THIS GUARANTY REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Guaranty. Neither this Guaranty nor any of its provisions may be waived, modified, amended, discharged or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in that agreement.


This Agreement shall be governed by and construed in accordance with the substantive law of the Property Jurisdiction without regard to the application of choice of law principles that would result in the application of the laws of another jurisdiction.

20. Property Jurisdiction.

Guarantor agrees that any controversy arising under or in relation to this Guaranty shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Guaranty or any other Loan Document with respect to the subject matter hereof. Guarantor irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

21. Time is of the Essence.

Guarantor agrees that, with respect to each and every obligation and covenant contained in this Guaranty, time is of the essence.

22. Notices.

Guarantor agrees to notify Lender of any change in Guarantor’s address within ten (10) Business Days after such change of address occurs. All “Notices” under this Guaranty shall be:

(a) in writing and shall be

(1) delivered, in person;

(2) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
(3) sent by overnight courier; or

(4) sent by electronic mail with originals to follow by overnight courier;

(b) addressed to the intended recipient at the notice addresses provided under the signature block at the end of this Guaranty; and

(c) deemed given on the earlier to occur of:

(1) the date when the Notice is received by the addressee; or

(2) if the recipient refuses or rejects delivery, the date on which the Notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

23. Construction.

(a) Any reference in this Guaranty to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Guaranty or to a Section or Article of this Guaranty.

(b) Any reference in this Guaranty to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(c) Use of the singular in this Guaranty includes the plural and use of the plural includes the singular.

(d) As used in this Guaranty, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only, and not a limitation.

(e) Whenever Guarantor’s knowledge is implicated in this Guaranty or the phrase “to Guarantor’s knowledge” or a similar phrase is used in this Guaranty, Guarantor’s knowledge or such phrase(s) shall be interpreted to mean the best of Guarantor’s knowledge after reasonable and diligent inquiry and investigation.

(f) Unless otherwise provided in this Guaranty, if Lender’s approval is required for any matter hereunder, such approval may be granted or withheld in Lender’s sole and absolute discretion.

(g) Unless otherwise provided in this Guaranty, if Lender’s designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.

(h) All references in this Guaranty to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
(i) “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

24. WAIVER OF JURY TRIAL.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR AND LENDER (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS GUARANTY OR ANY LOAN DOCUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS GUARANTOR AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY GUARANTOR AND LENDER, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

25. Schedules.

The schedules, if any, attached to this Guaranty are incorporated fully into this Guaranty by this reference and each constitutes a substantive part of this Guaranty.

ATTACHED SCHEDULE. The following Schedule is attached to this Guaranty:

☐ Schedule 1 Modifications to Guaranty

[Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, Guarantor has signed and delivered this Guaranty under seal (where applicable) or has caused this Guaranty to be signed and delivered under seal (where applicable) by its duly authorized representative. Where applicable law so provides, Guarantor intends that this Guaranty shall be deemed to be signed and delivered as a sealed instrument.

GUARANTOR:

________________________________________

By: ____________________________ (SEAL)
Name: _____________________________
Title: _____________________________

Address for Notices to Guarantor:

________________________________________

________________________________________

________________________________________

Email address: ___________________________
SCHEDULE 1 TO
GUARANTY (PAYMENT)

State-Specific Provisions

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Guaranty to which this Schedule is attached.

2. If the Property Jurisdiction is listed below, the additional provision(s) for such Property Jurisdiction set forth below shall also apply and are incorporated into the Guaranty:

ARIZONA: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) In addition, Guarantor waives, to the fullest extent allowed by applicable law, all of Guarantor’s rights under Sections 12-1566, 12-1642, 12-1643, 12-1644, 44-142, 47-3419, and 47-3605 of Arizona Revised Statutes, and Rule 17(f) of the Arizona Rules of Civil Procedure, as now in effect or as modified or amended in the future and any similar or analogous other present or future statutory or common law or procedural rule of any jurisdiction relevant to guarantors, indemnitors, sureties, co-makers and/or accommodation parties. Guarantor’s obligations under this Guaranty may be enforced by Lender in an action regardless of whether a trustee’s sale is held.

ARKANSAS: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) In recognition of the liability of Guarantor pursuant to this Guaranty, Guarantor waives and relinquishes any and all rights, defenses and benefits limiting or exonerating the liability of Guarantor including the rights and defenses of an “accommodation party” pursuant to the Arkansas Uniform Commercial Code, Ark. Code Ann. Section 4-3-101 et. seq.

CALIFORNIA: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) To the extent not addressed elsewhere by this Guaranty, Guarantor expressly waives any and all benefits, rights and/or defenses which might otherwise be available to Guarantor under the following sections of the California Civil Code: Section 2809 (the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal), Section 2810 (a surety is not liable if, for any reason other than the mere personal disability of the principal, there is no liability upon the part of the principal at the time of execution of the contract, or the liability of the principal thereafter ceases), Section 2819 (a surety is exonerated if the creditor alters the original
obligation of the principal without the consent of the surety), Section 2822
(a surety’s right to have the principal designate the portion of any
obligation to be satisfied by the surety in the event that the principal
provides partial satisfaction of such obligation), Section 2845 (a surety is
exonerated to the extent that the creditor fails to proceed against the
principal, or to pursue any other remedy in the creditor’s power which the
surety cannot pursue and which would lighten the surety’s burden),
Section 2846 (a surety may compel the principal to perform the obligation
when due), Section 2847 (if a surety satisfies the principal obligation, or
any part thereof, the principal is obligated to reimburse the surety for the
amounts paid by the surety), Section 2850 (whenever the property of a
surety is hypothecated with property of the principal, the surety is entitled
to have the property of the principal first applied to the discharge of the
obligation), Section 2899 (where one has a lien upon several things, and
other persons have subordinate liens upon, or interests in, some but not all
of the same things, the person having the prior lien, if he can do so without
risk of loss to himself, or of injustice to other persons, must resort to the
property in a certain order, on the demand of any party interested) and
Section 3433 (where a creditor is entitled to resort to each of several funds
for the satisfaction of his claim, and another person has an interest in, or is
entitled as a creditor to resort to some, but not all of them, the latter may
require the former to seek satisfaction from those funds to which the latter
has no such claim, so far as it can be done without impairing the right of
the former to complete satisfaction, and without doing injustice to third
persons).

(f) To the extent not addressed elsewhere by this Guaranty,
Guarantor expressly agrees not to exercise or take advantage of any rights,
benefits and/or defenses which might be available to Guarantor under the
following California Civil Code Sections, unless and until the Guaranteed
Obligations shall have been indefeasibly paid and satisfied in full:
Section 2839 (performance of the principal obligation, or an offer of such
performance, duly made as provided in the Civil Code, exonerates a
surety), Section 2848 (a surety, upon satisfaction of the obligation of the
principal, is entitled to enforce remedies which the creditor then has
against the principal and to pursue his co-sureties or other third parties
after the surety has satisfied the underlying debt, or at least more than his
share of it), and Section 2849 (a surety is entitled to the benefit of security
held by the creditor for the performance of the principal obligation held by
the creditor).

(g) Guarantor waives any defense that Guarantor may have by
reason of the failure of Lender to provide Guarantor with any material
facts about Borrower, including any information respecting the financial
condition of Borrower, Borrower’s ability to perform the Mortgage Loan
obligations or the sufficiency of Lender’s security.
(h) Guarantor waives any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person, or the failure of Lender to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons.

(i) Guarantor waives all rights of indemnification and contribution and any other rights and defenses that are or may become available to Guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code. Guarantor hereby waives the benefits of any right of discharge under any and all statutes or other laws relating to guarantors or sureties and any other rights of guarantors or sureties thereunder.

(j) Guarantor waives all rights and defenses that Guarantor may have because the debtor’s (Borrower’s) debt is secured by real property. This means, among other things:

(1) The creditor (Lender) may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.

(2) If the creditor forecloses on any real property collateral pledged by the debtor: (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) the creditor may collect from Guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the debtor’s debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the Code of Civil Procedure.

Guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor’s rights of subrogation and reimbursement against the principal (Borrower) by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(k) Any summary of statutory provisions is for convenience only, and Guarantor has read and is familiar with the entirety of such provisions.
COLORADO: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) In addition, Guarantor waives the benefit of C.R.S. Sections 13-50-101 through 13-50-103, inclusive.

CONNECTICUT: The following provision is hereby added to the Guaranty as Section [25]:


GUARANTOR ACKNOWLEDGES THAT THIS IS A “COMMERCIAL TRANSACTION” AS SUCH IS DEFINED IN CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, AS AMENDED. GUARANTOR FURTHER ACKNOWLEDGES THAT, PURSUANT TO SUCH SECTION, GUARANTOR HAS A RIGHT TO NOTICE OF AND HEARING PRIOR TO THE ISSUANCE OF ANY “PREJUDGMENT REMEDY.” NOTWITHSTANDING THE FOREGOING, GUARANTOR HEREBY WAIVES ALL RIGHTS TO SUCH NOTICE, JUDICIAL HEARING OR PRIOR COURT ORDER IN CONNECTION WITH ANY SUIT ON THIS GUARANTY.

GEORGIA: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) In addition, Guarantor waives the benefit of O.C.G.A. Section 10-7-24.

HAWAII: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) In addition, Guarantor waives the benefit of HRS Section 651 to the fullest extent permitted by law.

IOWA: The following provision is hereby added to the Guaranty as Section [25]:

[25]. No Oral Agreements.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS GUARANTY SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS GUARANTY MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS GUARANTY ONLY BY ANOTHER WRITTEN AGREEMENT.

KENTUCKY: Section 2 of the Guaranty is hereby deleted and restated in its entirety to read as follows:
2. Defined Terms.

All capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement. The following term, when used in this Guaranty has the following meaning:

"Indebtedness" means the principal of, interest on and all other amounts due at any time under the Note, Loan Agreement or the Security Instrument, or any or all of them, including prepayment premiums, late charges, default interest and advances as provided in the Loan Agreement to protect the security of the Security Instrument but expressly excludes any obligations under the Environmental Indemnity Agreement or other Loan Documents (including any obligations of Borrower under such other Loan Documents that are incorporated into or otherwise included in the obligations of Borrower under the Note, Loan Agreement or Security Instrument). The Security Instrument is from Borrower for benefit of Lender and is as of the date of this Guaranty.

Section 3 of the Guaranty is hereby amended by adding the following new language to the end thereof:

Notwithstanding anything in this Guaranty to the contrary, the instruments being guaranteed, within the meaning of K.R.S. 371.065, are the Note, the Loan Agreement and the Security Instrument, but only to the extent of the Indebtedness.

MINNESOTA: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) In addition, to the extent permitted by applicable law, Guarantor waives the benefit of Minnesota Statutes Section 582.30.

NEVADA: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) any and all benefits which might otherwise be available to Guarantor under any applicable laws, including, to the extent permitted in Nevada Revised Statutes Section 40.495(2), the benefits of the one-action rule under Nevada Revised Statutes Section 40.430, and to the extent permitted under Nevada Revised Statutes Section 104.3605, discharge under Nevada Revised Statutes Section 104.3605(9).

NEW MEXICO: The following provision is hereby added to the Guaranty as Section [25]:

[25]. No Oral Agreements.

Pursuant to Section 58-6-5 NMSA 1978, a contract, promise or commitment to loan money or to grant, extend or renew credit, or any
modification thereof, in an amount greater than Twenty-five Thousand and No/100 Dollars ($25,000.00) not primarily for personal, family or household purposes made by a financial institution is not enforceable unless made in writing and signed by the party to be charged or that party’s authorized representatives.

NORTH CAROLINA: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) Guarantor also waives, to the fullest extent permitted by law, all rights, including, without limitation, all rights granted by Sections 26-7 through 26-9, inclusive, of the North Carolina Statutes, to require Lender to:

(1) proceed against or exhaust any collateral held by Lender to secure the repayment of the Indebtedness;

(2) proceed against or pursue any remedy it may now or hereafter have against Borrower or any Guarantor, or, if Borrower or any Guarantor is a partnership, any general partner of Borrower or general partner of any Guarantor; or

(3) demand or require collateral security from Borrower, any other Guarantor or any other Person as provided by applicable law or otherwise.

OKLAHOMA: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) Guarantor further waives, to the fullest extent permitted by applicable law, any right to revoke this Guaranty as to any future advances by Lender under the Security Instrument to protect its interest in the Mortgaged Property. If Lender elects to enforce this Guaranty before, or without, enforcing the Security Instrument, Guarantor waives any right, whether pursuant to 12 Okla. Stat. Section 686 or otherwise, to require Lender to set off the value of the Mortgaged Property against the Indebtedness. Guarantor also hereby specifically waives all defenses, counterclaims, set-offs, benefits and rights which Guarantor might now or in the future have pursuant to 12 Okla. Stat. Section 686 (1991), 12 Okla. Stat. Section 3-605 (1992) and 15 Okla. Stat. Sections 323, 334, 335, 337, 338, 339, 341 and 344 (1991).

OREGON: The following provision is hereby added to the Guaranty as Section [25]:

17
[25]. No Oral Agreements.

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDER CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER’S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY LENDER TO BE ENFORCEABLE.

SOUTH CAROLINA: The following provision is hereby added to the Guaranty as Section [25]:

[25]. South Carolina State Specific Provision.

The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty (30) days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

GUARANTOR:

By: ______________________(SEAL)
Name: ______________________
Title: ______________________

TEXAS: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) In addition, Guarantor waives the benefit of any right of discharge under Chapter 43 of the Texas Civil Practice and Remedies Code and all other rights of sureties and guarantors thereunder.

(f) Guarantor waives all rights to contest any deficiency asserted by Lender as set forth in Texas Property Code 51.003, 51.004 and 51.005.
WASHINGTON: The following provision is hereby added to the Guaranty as Section [25]:

[25]. **No Oral Agreements.**

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

WEST VIRGINIA: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) In addition, Guarantor waives the benefit of W.Va. Code Sections 45-1-1, et seq.

WISCONSIN: Section 8 of the Guaranty is hereby amended by adding the following new language to the end thereof:

(e) Guarantor agrees to the provisions of Section 846.101 or 846.103 of the Wisconsin Statutes, whichever is applicable, or any successor provision, permitting Lender, at its option, upon waiving the right to judgment for deficiency, to hold a foreclosure sale of the Land and Improvements three (3) months after a foreclosure judgment is entered (if Section 846.103 is applicable) or six (6) months after a foreclosure judgment is entered (if Section 846.101 is applicable). Upon revocation by written notice or actual notice of death, this Guaranty shall continue in full force and effect as to all obligations contracted for or incurred before revocation, and as to them Lender shall have the rights provided by this Guaranty as if no revocation has occurred. Any renewal, extension or increase in the rate of any such Obligation, whether made before or after revocation, shall constitute an Obligation contracted for or incurred before revocation.

____________________
Guarantor Initials
B. Lien-Free Completion Guaranties

MASTER GUARANTY AGREEMENT
(Interest/Cost Overruns/Completion)
(Construction Phase)

THIS MASTER GUARANTY AGREEMENT (this “Guaranty”) is made as of the ___ day of ____________________, 20__, (the “Effective Date”) by __________________________ (the “Guarantor”), to, in favor of and for the benefit of __________________________________________, a ___________________________ (together with its successors and assigns collectively, the “Lender”).

PRELIMINARY STATEMENTS

1. Lender and ____________________________________________________________ (the “Borrower”), have entered into, are entering into concurrently herewith, or contemplate entering into, a Loan Agreement dated as of the date set forth on Schedule I attached hereto (herein called, as it may hereafter be modified, supplemented, restated, extended, or renewed and in effect from time to time, the “Loan Agreement”), which Loan Agreement sets forth the terms and conditions of a loan (collectively and individually, a “Loan”) to each Borrower for the construction of certain improvements on, and with respect to, land, as more particularly described in each Loan Agreement and identified therein as the Land.

2. The Loan is, or will be, evidenced by that certain Promissory Note of even date with the Loan Agreement, executed by Borrower and payable to the order of Lender in the principal face amount as set forth on Schedule I attached hereto (herein called, as it may hereafter be modified, supplemented, restated, extended, or renewed and in effect from time to time, the “Loan Agreement”), which Loan Agreement sets forth the terms and conditions of a loan (collectively and individually, a “Loan”) to each Borrower for the construction of certain improvements on, and with respect to, land, as more particularly described in each Loan Agreement and identified therein as the Land.

3. A condition precedent to Lender’s obligation to make a Loan to Borrower is Guarantor’s execution and delivery to Lender of this Guaranty.

Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Loan Agreement between Borrower and Lender. This Guaranty is one of the Loan Documents described in the Loan Agreement between Borrower and Lender.

STATEMENT OF AGREEMENTS

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lender to extend credit to Borrower, Guarantor hereby guarantees to Lender the prompt and full payment and
performance of the indebtedness and obligations described below in this Guaranty (collectively called the “Guaranteed Obligations”), this Guaranty being upon the following terms and conditions:

1. **Guaranty of Interest.** Guarantor hereby, jointly and severally, unconditionally and absolutely, guarantees to Lender the due and punctual payment of all interest accrued and due and payable on the Note through and including the Conversion Date.

2. **Guaranty of Cost Overruns.** Guarantor hereby, jointly and severally, unconditionally and irrevocably, guarantees payment to Lender for any and all losses, liabilities (including strict liabilities), claims, damages (including consequential damages), expenses (including reasonable attorneys’ fees incurred in connection with enforcing this Guaranty), including any penalties and/or fines of any kind whatsoever, arising out of the failure of Borrower or any Guarantor to fund “Cost Overruns” (defined herein). The term “Cost Overruns” as used herein means all costs incurred by Borrower in connection with the construction of any of the Improvements and the predevelopment costs in excess of the amounts shown therefor in the Project Budget.

3. **Guaranty of Performance.** Guarantor hereby, jointly and severally, unconditionally and irrevocably, guarantees to Lender the timely performance of the obligations of Borrower under the Loan Documents to construct and complete the Improvements on the Land, including, without limiting the generality of the foregoing, that:

   (a) the Improvements will be constructed in accordance with the applicable Loan Agreement between Borrower and Lender and with the Plans; and

   (b) the Improvements will be completed, lien free, and ready for occupancy, including delivery of any permits, certificates or governmental approvals required by law or the Loan Agreement between Borrower and Lender, on or before the Completion Date required in the Loan Agreement between Borrower and Lender.

If any of such obligations of Borrower are not complied with, in any respect whatsoever, and without the necessity of any notice from Lender to Guarantor, Guarantor agrees to (i) assume all responsibility for the completion of the Improvements and, at Guarantor’s own cost and expense, cause the Improvements to be fully completed in accordance with the Plans and the Loan Documents; (ii) pay all bills in connection with the construction of the Improvements; and (iii) indemnify and hold Lender harmless from any and all loss, cost, liability or expense that Lender may suffer by reason of any such non-compliance. So long as all of such obligations are being performed by Borrower or Guarantor and no Default exists, Lender will make the Loan proceeds available under and subject to the terms of the Loan Agreement between Borrower and Lender. If after the occurrence of a Default, and without limiting Lender’s rights and remedies, Lender, in its sole and absolute discretion, is dissatisfied with the progress of construction by Borrower and/or Guarantor, Lender may, at its option, without notice to Guarantor or anyone else, complete the
Improvements either before or after commencement of foreclosure proceedings or before or after exercise of any other right or remedy of Lender against Borrower or Guarantor, with such changes or modifications in the Plans as Lender deems necessary and expend such sums as Lender, in its sole and absolute discretion, deems necessary or advisable to complete the Improvements, and Guarantor hereby waives any right to contest any such expenditures by Lender. The amount of any and all expenditures made by Lender for the foregoing purposes shall bear interest from the date made until repaid to Lender, at a rate per annum equal to the interest rate provided for in the Note and, together with such interest, shall be due and payable by Guarantor to Lender upon demand. Lender does not have and shall never have any obligation to complete the Improvements or take any such action. The obligations and liability of Guarantor under this Section 2 shall not be limited or restricted by the existence of (or any terms of) any guaranty of payment under Section 1.

4. **Primary Liability of Guarantor.**

   (a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. Guarantor shall be liable for the payment and performance of the Guaranteed Obligations, as set forth in this Guaranty, as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever.

   (b) Guarantor hereby agrees that in the event of (i) default (subject to the notice and cure provisions of Section 4.2 of the Security Instrument, if applicable) by Borrower in payment or performance of the Guaranteed Obligations, or any part thereof, when such indebtedness or performance becomes due, either by its terms or as the result of the exercise of any power to accelerate; (ii) the failure of Guarantor to perform completely and satisfactorily the covenants, terms and conditions of any of the Guaranteed Obligations; (iii) the death, legal incompetency, dissolution or insolvency of Guarantor, provided, however, that the death or judicial determination of legal incompetency of a Guarantor shall not be a Default if a new Guarantor satisfactory to Lender in its sole discretion assumes the deceased or legally incompetent Guarantor’s obligations within sixty (60) days of the death of such Guarantor or judicial determination of legal incompetency; (iv) the inability of Guarantor to pay debts as they mature; (v) an assignment by Guarantor for the benefit of creditors; (vi) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee or custodian for any of them or for any of their respective properties which, if against Guarantor, is not dismissed within forty-five (45) days; (vii) the determination by Lender in good faith that a material adverse change has occurred in the financial condition of Guarantor; (viii) the entry of a final judgment against Guarantor which has a material adverse effect on Guarantor as determined by Lender in its sole discretion; (ix) a writ or order of attachment, levy or
garnishment is issued against Guarantor which has a material adverse effect on Guarantor as determined by Lender in its sole discretion; or (x) the falsity in any material respect of, or any material omission in, any representation made to Lender by Guarantor (individually and collectively an “Event of Default” or “Default”); then upon the occurrence of such Event of Default, the Guaranteed Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of Lender, and Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Lender of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, all such notices being hereby waived by Guarantor, pay the amount due thereon to Lender or perform or observe the agreement, covenant, term or condition, as the case may be, and pay all damages and all costs and expenses that may arise in consequence of such Event of Default (including, without limitation, all attorneys’ fees and expenses, investigation costs, court costs, and any and all other costs and expenses incurred by Lender in connection with the collection and enforcement of this Guaranty), whether or not suit is filed thereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal. It shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or others liable on such indebtedness or for such performance, or to enforce any rights against any security that shall ever have been given to secure such indebtedness or performance, or to join Borrower or any others liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Lender from suing on the Note or foreclosing the Security Instrument or from exercising any other rights thereunder, and if such foreclosure or other remedy is availed of, only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note and Security Instrument, and Lender shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof. At any sale of the Property or other collateral given for the Indebtedness or any part thereof, whether by foreclosure or otherwise, Lender may at its discretion purchase all or any part of the Property or collateral so sold or offered for sale for its own account and may, in payment of the amount bid therefor, deduct such amount from the balance due it pursuant to the terms of the Note, the Security Instrument and other Loan Documents.

(c) Suit may be brought or demand may be made against Borrower or against all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. Any time that Lender is entitled to exercise its rights or remedies hereunder, it may in its discretion elect
to demand payment and/or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

5. Certain Agreements and Waivers by Guarantor.

(a) Guarantor hereby agrees that neither Lender’s rights or remedies nor Guarantor’s obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

1. any limitation of liability or recourse in any other Loan Document or arising under any law;

2. any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;

3. the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

4. any homestead exemption or any other exemption under applicable law;

5. any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, including any impairment of Guarantor’s recourse against any Person or collateral;

6. whether express or by operation of law, any partial release of the liability of Guarantor hereunder, or if one or more other guaranties are now or hereafter obtained by Lender covering all or any part of the Guaranteed Obligations, any complete or partial release of any one or more of such guarantors under any such other guaranty, or any complete or partial release of Borrower or any other party liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

7. the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate,
partnership or other power of Borrower or any other party at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(8) either with or without notice to or consent of Guarantor: any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance (including changes in the Plans and other terms or aspects of construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Lender to Borrower, Guarantor, and/or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(9) any neglect, lack of diligence, delay, omission, failure, or refusal of Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(10) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse, or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and the Guarantor shall be responsible for obtaining for itself information regarding the Borrower, including, but not limited to, any changes in the business or financial condition of the Borrower, and the Guarantor acknowledges and agrees that the Lender shall have no duty to notify the Guarantor of any information which the Lender may have concerning the Borrower.
(11) if for any reason Lender is required to refund any payment by Borrower to any other party liable for the payment or performance of any or all of the Guaranteed Obligations or pay the amount thereof to someone else;

(12) the making of advances by Lender to protect its interest in the Property, preserve the value of the Property or for the purpose of performing any term or covenant contained in any of the Loan Documents between Borrower and Lender;

(13) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Lender, or any other Person, whether or not arising in connection with this Guaranty, the Note, the Loan Agreement, or any other Loan Document;

(14) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or because the officers or Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower’s obligation ceases to exist by operation of law, or because of any other reason or circumstance, 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 (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations);

(15) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender;

(16) any other condition, event, omission, action or inaction that would in the absence of this paragraph result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement;

(b) In the event any payment by Borrower or any other person to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Lender shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Lender of this Guaranty or of
Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Lender or paid by Lender to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Lender and any attorneys’ fees, costs and expenses paid or incurred by Lender in connection with any such event. It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. Lender shall be entitled to continue to hold this Guaranty in its possession for the longer of (i) the period after which no action may be commenced by Lender with respect to a claim under the Environmental Agreement shall accrue, or (ii) a period of one (1) year from the date the Guaranteed Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of Guarantor hereunder and/or to exercise any right or remedy of Lender hereunder pursuant to this Section 4(b).

(c) If acceleration of the time for payment of any amount payable by Borrower under the Note, the Loan Agreement, or any other Loan Document between Borrower and Lender is stayed or delayed by any law or tribunal, all amounts payable under this Guaranty shall nonetheless be payable by Guarantor on demand by Lender.

6. Subordination. If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Lender a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to
have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, Guarantor shall pay the same to Lender immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including, but not limited to, execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

7. Other Liability of Guarantor or Borrower. If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Lender other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may have against Guarantor. If Borrower is or becomes indebted to Lender for any indebtedness other than or in excess of the Indebtedness for which Guarantor is liable under this Guaranty, any payment received or recovery realized upon such other indebtedness of Borrower to Lender may, except to the extent paid by Guarantor on the Indebtedness or specifically required by law or agreement of Lender to be applied to the Indebtedness, in Lender’s sole discretion, be applied upon indebtedness of Borrower to Lender other than the Indebtedness. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor’s liability under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity, including without limitation, its capacity as a general partner.

8. Lender Assigns. This Guaranty is for the benefit of Lender and Lender’s successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations, or any part thereof, and agrees that failure to give notice of any such transfer or assignment will not affect the liabilities of Guarantor hereunder.

9. Binding Effect. This Guaranty is binding not only on Guarantor, but also on Guarantor’s heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against
Guarantor’s estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor’s estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term “Guarantor” shall mean all of such Persons and each of them individually.


11. Consent to Jurisdiction.

12. Invalidity of Certain Provisions. If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

13. Attorneys’ Fees and Costs of Collection. Guarantor shall pay on demand all reasonable attorneys’ fees and all other costs and expenses incurred by Lender in the enforcement of or preservation of Lender’s rights under this Guaranty including, without limitation, all investigation costs and court costs, whether or not suit is filed hereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guaranty against any other Guarantor, if there be more than one. Guarantor agrees to pay interest on any expenses or other sums due to Lender under this Section that are not paid when due, at a rate per annum equal to the interest rate provided for in the Note. Guarantor’s obligations and liabilities under this Section shall survive any payment or discharge in full of the Guaranteed Obligations.

14. Payments. All sums payable under this Guaranty shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

15. Representations, Warranties, and Covenants of Guarantor. Guarantor hereby represents, warrants, and covenants that (a) Guarantor has a direct or indirect financial interest in the Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of a Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which Guarantor is bound or affected; (d) Guarantor is duly organized, validly existing, and in good standing under the
laws of the state of its organization and has full power and authority to enter into and perform this Guaranty; (e) Guarantor will indemnify Lender from any loss, cost or expense as a result of any representation or warranty of the Guarantor being false, incorrect, incomplete or misleading in any material respect; (f) there is no litigation pending or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting Guarantor; (g) all financial statements and information heretofore furnished to Lender by Guarantor do, and all financial statements and information hereafter furnished to Lender by Guarantor will, fully and accurately present in all material respects the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor’s operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Lender, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (h) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (i) Lender has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein, and Guarantor will keep fully apprised of Borrower’s financial and business condition; (j) Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Obligations in full without assistance or support from Borrower or any other Person; and (k) Guarantor has read and fully understands the provisions contained in the Loan Documents. Guarantor’s representations, warranties and covenants are a material inducement to Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.


17. Cumulative Rights. The exercise by Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Lender shall have all rights, remedies and recourses afforded to Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole and absolute discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other
document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Lender shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right, remedy or recourse of Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to Guarantor, by Lender.

18. Term of Guaranty. This Guaranty shall continue in effect until all the Guaranteed Obligations are fully and finally paid, performed, and discharged, except that, and notwithstanding any return of this Guaranty to Guarantor, this Guaranty shall continue in effect (i) with respect to any of the Guaranteed Obligations that survive the full and final payment of the indebtedness evidenced by the Note, if any, for a period of one (1) year from the date of payment in full of the Note (ii) with respect to all obligations and liabilities of Guarantor under Sections 2 and 3 provided the enforcement or exercise of any remedy is commenced within one (1) year of payment in full of the Note, and (iii) as provided in Section 4(b).

19. Financial Statements. As used in this Section, “Financial Statements” means (i) for each reporting party other than an individual, a balance sheet, income statement, statements of cash flow and amount and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and, unless Lender otherwise consents, consolidated and consolidating statements if the reporting party is a holding company or a parent of a subsidiary entity; and (ii) for each reporting party who is an individual, a balance sheet, statements of amount and sources of contingent liabilities, sources and uses of cash and liquidity verification, and, unless Lender otherwise consents, Financial Statements for each entity owned or jointly owned at least fifty percent (50%) by the reporting party. Each party for whom Financial Statements are required is a “reporting party” and a specified period to which the required Financial Statements relate is a “reporting period”. Guarantor shall provide or cause to be provided to Lender the following:

(a) Financial Statements of Guarantor, and of each member of Guarantor: (i) if other than an individual, for each fiscal year of such reporting party, as soon as reasonably practicable and in any event within one hundred twenty (120) calendar days after the close of each fiscal year, and for each quarter, as soon as reasonably practicable and in any event within forty-five (45) days after the close of each
such reporting period; or (ii) if an individual, annual Financial Statements in each instance within sixty (60) calendar days after the one-year anniversary of the date of his or her Financial Statements most recently provided to Lender.

(b) Copies of filed federal and state income tax returns of Guarantor for each taxable year, within thirty (30) days after filing but in any event not later than one hundred fifty (150) days after the close of each such taxable year.

(c) From time to time promptly after Lender’s request, such additional information, reports and statements regarding the business operations and financial condition of each reporting party as Lender may reasonably request.

All Financial Statements shall be in form and detail satisfactory to Lender and shall contain or be attached to the signed and dated written certification of the reporting party in form satisfactory to Lender to certify that the Financial Statements are furnished to Lender in connection with the extension of credit by Lender and constitute a true and correct statement in all material respects of the reporting party’s financial position. All certifications and signatures on behalf of corporations, partnerships or other entities shall be by a representative of the entity satisfactory to Lender. All Financial Statements for a reporting party who is an individual shall be on Lender’s then-current personal financial statement form or in another form satisfactory to Lender. All fiscal year-end Financial Statements shall contain all reports and disclosures required for preparation on a U.S. Income Tax Basis of accounting for a fair presentation and be certified, as required by Lender without any qualification or exception not acceptable to Lender, by a representative of the entity satisfactory to the Lender.

All assets shown on the Financial Statements provided by Guarantor, unless clearly designated to the contrary shall be conclusively deemed to be free and clear of any exemption or any claim of exemption of Guarantor at the date of the Financial Statements and at all times thereafter. Acceptance of any Financial Statement by Lender, whether or not in the form prescribed herein, shall be relied upon by Lender in the administration, enforcement, and extension of the Guaranteed Obligations.

20. Participation and Disclosure of Information. Lender may sell or offer to sell the Loan or interests in the Loan to one or more assignees or participants and may disclose to any such assignee or participant or prospective assignee or participant, to Lender’s affiliates, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate in Lender’s reasonable judgment, any information Lender now has or hereafter obtains pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including, without limitation, information regarding any security for the Guaranteed Obligations or for this Guaranty, credit or other information on Guarantor, Borrower, and/or any other party liable, directly or indirectly, for any part of the Guaranteed Obligations.

21. Right of Set-Off. Upon the occurrence and during the continuance of any Default, however defined, in the payment or performance when due of any of the
Guaranteed Obligations, Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, without notice to any Person (any such notice being expressly waived by Guarantor to the fullest extent permitted by applicable law), to set off and apply any and all deposits, funds, or assets at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty, whether or not Lender shall have made any demand under this Guaranty or exercised any other right or remedy hereunder. Lender will promptly notify Guarantor after any such set-off and application made by Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this Section are in addition to the other rights and remedies (including other rights of set-off) that Lender may have and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

22. **Subrogation.** Notwithstanding anything to the contrary contained herein, Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Indebtedness, or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Indebtedness has been fully and finally paid. This waiver is given to induce Lender to make the Loan to Borrower.

23. **Further Assurances.** Guarantor at Guarantor’s expense will promptly execute and deliver to Lender upon Lender’s request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the agreements of Guarantor under this Guaranty.

24. **No Fiduciary Relationship.** The relationship between Lender and Guarantor is solely that of lender and guarantor. Lender has no fiduciary or other special relationship with or duty to Guarantor and none is created hereby or may be inferred from any course of dealing or act or omission of Lender.

25. **Interpretation.** If this Guaranty is signed by more than one Person as “Guarantor”, then the term “Guarantor” as used in this Guaranty shall refer to all such Persons jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guaranty are made by and shall be binding upon each and every such undersigned Person, jointly and severally and Lender may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Security Instrument and/or applicable law with respect to the Property or any other Loan Documents. The term “Lender” shall be deemed to include any subsequent holder(s) of the Note. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other gender. Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents. All
references in this Guaranty to Schedules, Articles, Sections, Subsections, paragraphs and subparagraphs refer to the respective subdivisions of this Guaranty, unless such reference specifically identifies another document. The terms “herein”, “hereof”, “hereto”, “hereunder” and similar terms refer to this Guaranty and not to any particular Section or subsection of this Guaranty. The terms “include” and “including” shall be interpreted as if followed by the words “without limitation”. All references in this Guaranty to sums denominated in dollars or with the symbol “$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. For purposes of this Guaranty, “Person” or “Persons” shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including governmental bodies, agencies, or instrumentalities, as well as natural persons.

26. **Time of Essence.** Time shall be of the essence in this Guaranty with respect to all of Guarantor’s obligations hereunder.

27. **Counterparts.** This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which taken together shall constitute but one and the same agreement.

28. **Entire Agreement.** This Guaranty embodies the entire agreement between Lender and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. No condition or conditions precedent to the effectiveness of this Guaranty exist. This Guaranty shall be effective upon execution by Guarantor and delivery to Lender. This Guaranty may not be modified, amended or superseded except in a writing signed by Lender and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded.

29. **Waiver of Trial by Jury.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.
IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed and delivered as of the Effective Date.

GUARANTOR:

________________________________________
C. Limited Guaranty

GUARANTY

GEORGIA, DEKALB COUNTY

To induce ______________, a ____________ (hereinafter referred to as the “Bank”), to extend credit or to continue to extend credit to ________________, a Georgia limited liability company (hereinafter referred to as the “Principal”), and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Undersigned (which term refers both to each of the Undersigned individually and to all or any two or more jointly) hereby jointly and severally unconditionally and irrevocably deliver the Guaranty to the Bank and hereby jointly and severally unconditionally and irrevocably guarantee to the Bank, and any transferee of this Guaranty or of any liability guaranteed hereby, the full and prompt payment of all present and future liabilities of the Principal to the Bank irrespective of their nature or the time they arise. If any liability guaranteed hereby is not paid when due, the Undersigned hereby agree to and will immediately pay same, without resort by the holder thereof to any other person or party.

The liabilities covered by this Guaranty and hereby guaranteed by the Undersigned (herein referred to collectively and individually as the “liabilities”) include all obligations and liabilities of the Principal to the Bank (whether individually or jointly with others, and whether direct, indirect, absolute or contingent as maker, endorser, guarantor, surety or otherwise) now existing or hereafter coming into existence and renewals or extensions in whole or in part of any of said liabilities and include any and all damages, losses, costs, interest, charges, attorney’s fees and expenses of every kind, nature and description suffered or incurred by the Bank, arising in any manner out of or in any way connected with, or growing out of, said liabilities. As used herein, the term person includes natural persons, partnerships, and incorporated and unincorporated entities and associations of every kind.

The monetary obligation of the Undersigned hereunder is limited to the principal sum of THREE MILLION THREE HUNDRED SEVENTY SIX THOUSAND EIGHT AND 00/100 Dollars ($5,376,800.00) plus any liabilities of the Principal arising from or relating to said principal sum. Any payment of the Undersigned hereunder may be applied to any of the liabilities which the Bank may choose. The obligation of the Undersigned hereunder is in addition to and shall not prejudice or be prejudiced by any other agreement, instrument, surety or guaranty (including any agreement, instrument, surety or guaranty signed by the Undersigned) which the Bank may now or hereafter hold relative to any of the liabilities. The obligation of the Undersigned to the Bank hereunder is primary, absolute and unconditional, except as it may be specifically limited above.

The Bank and Undersigned acknowledge that there may be future advances by the Bank to the Principal (although the Bank may be under no obligation to make such advances) and that the number and amount of the liabilities are unlimited and may
fluctuate from time to time hereafter. The Undersigned expressly agree that the Undersigned’s obligation hereunder shall remain absolute, primary and unconditional notwithstanding such future advances and fluctuations, if any, and agree that, in any event, this agreement is a continuing Guaranty and shall remain in force at all times hereafter whether there are any liabilities outstanding or not, until all originals hereof are returned to the Undersigned by the Bank or until a written notice from the Undersigned terminating this Guaranty has been received and acknowledged by the Bank, but such written termination shall not release the Undersigned from liability for payment of (i) any and all liabilities (as hereinbefore defined) then in existence, (ii) any renewals or extensions thereof in whole or in part, whether such renewals or extensions are made before or after such termination, and (iii) any damages, losses, costs, interest, charges, attorney’s fees or expenses then or thereafter incurred in connection with said liabilities or any renewals or extensions thereof.

As a security for the payment of the liabilities and the obligation of the Undersigned hereunder, the Undersigned hereby assign and grant a security interest to the Bank in (i) all property of the Undersigned in or coming into the possession, control, or custody of the Bank, or in which the Bank has or hereafter acquires a lien, security interest, or other right; and (ii) any existing or hereafter created lien or security interest in favor of the Undersigned in any property of the Principal. The Undersigned hereby agree that any rights of the Undersigned may now or hereafter have in any collateral securing any of the liabilities or against the Principal or any property of the Principal, including rights arising by virtue of subrogation or otherwise, shall be subordinate and junior to the Bank’s rights to said collateral or property and to the Bank’s indefeasible right to the prior payment of liabilities. The Undersigned further authorize the Bank, without notice or demand, to apply any indebtedness due or to become due to the Undersigned from the Bank in satisfaction of any of the liabilities and the Undersigned’s obligation hereunder, including, but not limited to, the right to set-off against any deposits of the Undersigned with the Bank.

The Undersigned hereby consent and agree that, at anytime or times, without notice to or further approval of the Undersigned or the Principal, and without in any way affecting the obligation of the Undersigned hereunder, the Bank may with or without consideration, (i) release, compromise, or agree not to sue, in whole or in part, the Principal, any of the Undersigned or any other obligor, guarantor, endorser or surety upon any of the liabilities; (ii) waive, rescind, renew, extend, modify, increase, decrease, delete, terminate, amend, or accelerate in accordance with its terms, either in whole or in part, any of the liabilities, any of the terms thereof, or any agreement, covenant, condition or obligation of or with the Principal, any of the Undersigned, or any other obligor, guarantor, endorser or surety upon any of the liabilities; and (iii) apply any payment received from the Principal, any of the Undersigned or any other obligor, guarantor, endorser or surety upon any of the liabilities to any of the liabilities which the Bank may choose.
The Undersigned hereby consent and agree that the Bank may at any time, either with or without consideration, surrender, release or receive any property or other security of any kind or nature whatsoever held by it or any person on its behalf or for its account securing any indebtedness of the Principal or any liability, or substitute any collateral so held by the Bank for other collateral of like kind, or of any kind, without notice to or further consent from the Undersigned, and such surrender, receipt, release or substitution shall not in any way affect the obligation of the Undersigned hereunder. The Bank shall have full authority to adjust, compromise and receive less than the amount due upon any such collateral, and may enter into any accord and satisfaction agreement with respect to the same as may seem advisable to the Bank without affecting the obligation of the Undersigned hereunder, which shall remain absolute, primary and unconditional. The Bank shall be under no duty to undertake to collect upon such collateral or any part thereof, and shall not be liable for any negligence or mistake in judgment in handling, disposing of, obtaining, or failing to collect upon, or perfecting a security interest in, any such collateral.

This Guaranty covers all liabilities to the Bank, purporting to be made on behalf of the Principal by any officer, agent or partner of said Principal, without regard to the actual authority of such officer, event or partner to bind the Principal; and without regard to the capacity of the Principal or whether the organization or charter of the Principal is in any way defective.

The Undersigned hereby waive notice of acceptance of this agreement and of the creation, extension or renewal of any liability of the Principal to which it relates and of any default by the Principal. The Undersigned hereby waive presentment, demand, protest and notice of dishonor of any of the liabilities, and hereby waive any failure to promptly commence suit against any party thereto or liable thereon or to give any notice to or make any claim or demand upon the Undersigned or the Principal. No act, failure to act, or omission of any kind on the part of the Undersigned, the Principal, the Bank or any other person shall be a legal or equitable discharge or release of the Undersigned from their obligation hereunder unless agreed to hereafter in writing by the Bank. This Guaranty shall not be affected by any change which may arise by reason of the death of the Undersigned, of any partner(s) of the Undersigned, or of the Principal, or by reason of the accession to any such partnership of any one or more new partners. The Undersigned further agree that this instrument shall continue to be active or be reinstated as the case may be, if at any time payment, or any part thereof, of the principal of or interest on any of the liabilities is rescinded or must otherwise be restored or returned by the Bank upon the insolvency, bankruptcy or reorganization of the Principal, or otherwise, all as though such payment had not been made.

This agreement shall bind and inure to the benefit of the Bank, its successors and assigns, and likewise shall bind and inure to the benefit of the undersigned, their heirs, executors, administrators, estates, successors and assigns. This agreement and its performance, interpretation and enforcement shall in all respects be governed by the laws of the State of Georgia. If any legal action or actions are instituted by the Bank to enforce
any of its rights against the Undersigned hereunder, then the Undersigned, jointly and severally, agree to pay the Bank all expenses incurred by the Bank relative to such legal action or actions, including, but not limited to, court costs plus 15% of the total amount of the principal and accrued interest then due the Bank hereunder as attorney’s fees.

The obligation of the Undersigned hereby created is joint and several, and the Bank is authorized and empowered to proceed against the Undersigned or any of them, without joining the Principal or any other others of the Undersigned. All of said parties may be sued together, or any of them may be sued separately without first or contemporaneously suing the others. There shall be no duty or obligation under the Bank, whether by notice under Official Code of Ga. Ann §10-7-2.4 or otherwise, (i) to proceed against the Principal or any of the Undersigned, (ii) to initiate any proceeding or exhaust any remedy against the Principal or any of the Undersigned, or (iii) to give any notice to the undersigned or the Principal, whatsoever, before bringing suit, exercising any rights to any collateral or security, or instituting proceedings of any kind against the Principal, the Undersigned or any of them.

In the event of death, incompetency, dissolution or insolvency (as defined by the Uniform Commercial Code as in effect at that time in Georgia) of the Principal, or if a bankruptcy or insolvency action be filed by or against the Principal, or if a receiver be appointed for any part of the property or assets of the Principal, or if any final judgment for money damages be entered against the Principal in a court of competent jurisdiction and remain unsatisfied for a period of thirty (30) days or more, and whether or not such event occurs at a time when any of the liabilities are otherwise due and payable, the Undersigned agree to pay to Bank upon demand the full amount which would be payable hereunder by the Undersigned if all liabilities were then due and payable. Until all liabilities of the Undersigned to Bank have been paid in full, the Undersigned shall have no right of subrogation and hereby waive any right to enforce any remedy which Bank now has or may hereafter have against Principal and any benefit of, and any right to participate in, any security now or hereafter held by Bank.

The Undersigned hereby ratify, confirm, and adopt all the terms, conditions, agreements and stipulations of all notes and other evidences of the initiatives heretofore or hereafter executed. Without in any way limiting the generality of the foregoing, the Undersigned, and each of them, waive and renounce, each for himself and family, any and all homestead or exemption rights any of them may have under or by virtue of the Constitution or laws of Georgia, any other state, or the United States, as against the obligation hereby created, provided, however, that such waiver shall not apply to any obligation created hereunder which arises from any of the liabilities that are consumer credit transactions; and the Undersigned each do hereby transfer, convey and assign, and direct any trustee in Bankruptcy or receiver to deliver to the Bank or holder hereof, a sufficient amount of property or money in any homestead or exemption that may be allowed to the Undersigned, or any of them, to pay any liability guaranteed hereby in full and all costs of collection. The Undersigned also waive and renounce for themselves any defense to any of the liabilities which may be available to or could be asserted by the
Principal, except for payment. All of the Bank’s rights and remedies are cumulative and those granted hereunder are in addition to any rights and remedies available to the Bank under law. If any provision of this agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid and unenforceable shall not be affected thereby, and each provision of this agreement shall be valid and enforceable to the full extent permitted by law. The failure or forbearance of the Bank to exercise any right hereunder, or otherwise granted to it by law or another agreement, shall not affect the obligation of the Undersigned hereunder and shall not constitute a waiver of said right. This Guaranty contains the entire agreement between the parties, and no provision hereof may be waived, modified, or altered except by writing executed by the Undersigned and the Bank. There is no understanding that any person other than or in addition to the Undersigned shall execute this Guaranty.

THE UNDERSIGNED’S EXECUTION OF THIS GUARANTY WAS NOT BASED UPON ANY FACTS OR MATERIALS PROVIDED BY BANK, NOR WAS THE UNDERSIGNED INDUCED TO EXECUTE THIS GUARANTY BY ANY REPRESENTATION, STATEMENT OR ANALYSIS MADE BY BANK. THE UNDERSIGNED ACKNOWLEDGE AGREE THAT THE UNDERSIGNED ASSUME SOLE RESPONSIBILITY FOR INDEPENDENTLY OBTAINING ANY INFORMATION OR REPORTS DEEMED ADVISABLE BY THE UNDERSIGNED WITH REGARD TO THE PRINCIPAL OR ANY OF THE UNDERSIGNED, AND THE UNDERSIGNED AGREE TO RELY SOLELY ON THE INFORMATION OR REPORTS SO OBTAINED IN REACHING ANY DECISION TO EXECUTE OR NOT TO TERMINATE THIS GUARANTY. THE UNDERSIGNED ACKNOWLEDGE AND AGREE THAT THE BANK IS AND SHALL BE UNDER NO OBLIGATION NOW OR IN THE FUTURE TO FURNISH ANY INFORMATION TO THE UNDERSIGNED CONCERNING THE PRINCIPAL, THE LIABILITIES OR ANY OF THE OTHER UNDERSIGNED, AND THAT THE BANK DOES NOT AND SHALL NOT BE DEEMED IN THE FUTURE TO WARRANT THE ACCURACY OF ANY INFORMATION OR REPRESENTATION CONCERNING THE PRINCIPAL, THE UNDERSIGNED OR ANY OTHER PERSON WHICH MAY INDUCE THE UNDERSIGNED TO EXECUTE OR NOT TO TERMINATE THIS GUARANTY.

IN WITNESS HEREOF and in agreement hereto the undersigned individual(s) have affixed their signatures and seals and the undersigned corporation(s) have caused their seals be affixed by their duly authorized officers this 15th day of May 2007.