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GUARANTY¹

¹ Optional form of Guaranty to be used with Loan Agreement or Line of Credit for loan to a California non-profit corporation, secured by personal property collateral or real property collateral.

THIS GUARANTY (“**Guaranty**”) is made and entered into as of [DATE OF AGREEMENT], by [COMPLETE LEGAL NAME OF GUARANTOR], [a _____] (the “**Guarantor**”), for the benefit of [COMPLETE LEGAL NAME OF LENDER], a California nonprofit [public benefit] corporation (“**Lender**”), or to order, and is made with reference to the following facts:

RECITALS

A. [[COMPLETE LEGAL NAME OF BORROWER], a California nonprofit [public benefit] corporation (“**Borrower**”) and Lender entered into that certain Loan Agreement dated as of [DATE OF LOAN AGREEMENT] [(the “**Loan Agreement**”)] and that certain Promissory Note dated as of [DATE OF NOTE] (the “**Note**”),] pursuant to which Lender has lent to Borrower an amount of _____ Dollars (\$ _____) (the “**Loan**”). The funds advanced by Lender to Borrower pursuant to the Loan Agreement were solely for the payment of expenses associated with Borrower’s Charitable Purpose (as defined in the Loan Agreement).]²

A. [[COMPLETE LEGAL NAME OF BORROWER], a California nonprofit [public benefit] corporation (“**Borrower**”) and Lender entered into that certain Line of Credit Agreement dated as of [DATE OF LINE OF CREDIT] (the “**Line of Credit Agreement**”) pursuant to which Lender has agreed to advance certain funds to Borrower in an amount not to exceed _____ Dollars (\$ _____) (the “**Loan**”). The funds advanced by Lender to Borrower pursuant to the Line of Credit Agreement were solely for the payment of expenses associated with Borrower’s Charitable Purpose (as defined in the Line of Credit Agreement).]³

B. Borrower’s obligations under the [Loan Agreement][Line of Credit Agreement] are secured by that certain [(i) the Security Agreement by Borrower in favor of Lender], [(ii) [the Deed of Trust with Fixture Filing, Assignment of Leases and Rents and Security Agreement by Borrower to [COMPLETE NAME OF TRUSTEE], as trustee, for the benefit of Lender] (the “**Security Instrument[s]**”⁴)] and, together with the [Loan Agreement][Line of Credit Agreement], [the Note] and all of the agreements, instruments and documents entered into in connection with the Loan, as may be amended, extended, supplements, assigned, restated or otherwise modified, the “**Loan Documents**”). Capitalized terms not defined in this Guaranty shall have the meanings ascribed to them in the [Loan Agreement][Line of Credit Agreement]. As used herein, the term “**Parties**” means all of Lender and Guarantor, and individually each is referred to as a “**Party**”.

C. Lender and Borrower desire to set forth herein and amend the terms and conditions pursuant to which Guarantor guarantees Borrower’s obligations under the Loan Documents to induce Lender to enter into the Loan Documents.

D. The term “**Obligations**” is used in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of Borrower to Lender, whenever made, incurred or created, past, present or future, whether voluntary or involuntary and however

² Use the following section a. if using a Loan Agreement.

³ Use the following section a. if using a Line of Credit.

⁴ Make plural if using both Security Agreement and Deed of Trust.

arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined and whether Borrower may be liable individually or jointly with others, or whether recovery may be or become barred by any statute of limitations or otherwise become unenforceable, including without limitation, those advances, debts, obligations and liabilities of Borrower to Lender incurred under the Loan Documents.

E. Guarantor receives consideration for and benefits from the extension of credit to Borrower.

A G R E E M E N T

NOW, THEREFORE, in consideration of Lender's agreement to extend credit and as an inducement to do so and for other good and valuable consideration, the adequacy and receipt of which Guarantor hereby acknowledges, Guarantor hereby covenants and agrees with Lender, for the benefit of Lender and Lender's assignee of the Obligations, as follows:

1. GUARANTY. Guarantor hereby unconditionally, absolutely and irrevocably guarantees:

1.1 Payment. The due and punctual payment of the entire Obligations.

1.2 Performance. The full and faithful performance of all the terms, covenants, conditions and guaranties contained in any writing or instrument evidencing or securing the Obligations, including but not limited to the Loan Documents.

1.3 Additional Credit. In the event that additional credit under the Loan Documents is granted from time to time at Borrower's request, no further authorization from or notice to Guarantor shall be required, and any such additional credit shall automatically be deemed part of the Obligations. Lender need not inquire into Borrower's power or the authority of its members, officers, or agents acting or purporting to act on its behalf in connection with any such additional credit. Each credit granted to Borrower under the Loan Documents shall be deemed to have been granted at Guarantor's instance and request and in consideration of, and in reliance on, this Guaranty.

2. REPRESENTATIONS AND WARRANTIES

Guarantor represents and warrants that:

2.1 Authorization. Guarantor has all requisite power to execute and deliver this Guaranty and to perform Guarantor's obligations under this Guaranty. The execution, delivery, and performance of this Guaranty have been duly authorized by Guarantor.

2.2 Binding Obligation of Guarantor. This Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, except as the enforceability thereof may be affected by (i) bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally, and (ii) the availability of certain equitable remedies or limitations imposed by certain equitable principles of general applicability. Guarantor further represents and warrants that,

notwithstanding a certain degree of commonality of ownership of Borrower and Guarantor, Guarantor is an independent legal entity, fully separate from Borrower, and is not a so-called “alter ego” of Borrower, and that Guarantor has no financial or other interest in Borrower. Guarantor further represents and warrants that Guarantor presently has no defenses to any action or proceeding at law or otherwise that may be instituted on this Guaranty (including, without limitation, any defense based on adequacy of legal consideration), and hereby waives any such defenses in the future.

2.3 Other Agreements. The execution, delivery and performance of this Guaranty shall not (a) violate any provision of California or federal law or regulation or any order of any Governmental Authority, court, arbitration board, or tribunal applicable to or binding on Guarantor, Guarantor’s assets, or its business, or (b) result in the breach or constitute a default under any provisions of, or result in the creation of any security interest, lien, charge, or encumbrance upon any of the property or assets of Guarantor pursuant to any indenture, agreement, or other instrument by which Borrower or any of its properties is bound or affected.

2.4 Litigation. There is no litigation, investigation, or proceeding in any court or before any arbitrator or governmental regulatory commission, board, administrative agency, or other Governmental Authority pending, or, to the knowledge of Guarantor, threatened, against or affecting Guarantor, or any of its properties that, if adversely determined, could be reasonably expected to prevent or interfere with or adversely affect Guarantor entering into this Guaranty, or the validity of this Guaranty or the carrying out of the terms hereof.

2.5 Information Not Required. Guarantor represents that Guarantor is fully aware of Borrower’s financial condition and operation and is in a position by virtue of its relationship to Borrower to obtain all necessary financial and operational information concerning Borrower.

3. AUTHORIZED ACTIONS. Guarantor authorizes Lender, in the exercise of Lender’s sole discretion, either before or after default by Borrower or the revocation or termination of this Guaranty, without notice or demand to or consent of Guarantor, and without affecting the liability of Guarantor under this Guaranty, from time to time to:

3.1 Waive Compliance/Default. Waive compliance with, or any defaults under, or grant any other indulgences with respect to, any of the Loan Documents;

3.2 Modification. Agree with Borrower to modify, amend or change any provision of any of the Loan Documents;

3.3 Extension or Renewal. Grant to Borrower extensions or renewals of any of the Loan Documents, and/or effect any release, compromise or settlement in connection with any of the Loan Documents;

3.4 Substitution, Exchange or Release. Agree with Borrower to the substitution, exchange, release or other disposition of all or any part of the property encumbered by any of the Loan Documents or any instrument delivered pursuant thereto;

3.5 Advances. Make advances for the purpose of performing any term or covenant contained in any of the Loan Documents with respect to which Borrower or the then owner of the property shall be in default;

3.6 Assignment of Transfer. Assign or otherwise transfer any of the Loan Documents or this Guaranty or any interest therein or herein;

3.7 Deal Directly with Borrower. Deal in all respects with Borrower or the then owner of the property as if this Guaranty were not in effect;

3.8 Add, Release or Substitute Guarantors. Release, substitute or add one or more endorsers, co-signors or guarantors under the Loan Documents;

3.9 Obtain Collateral. Obtain collateral for the payment of the Obligations and/or any guaranty thereof;

3.10 Remedies. Exercise any right or remedy that Lender may have with respect to the Loan Documents, or with respect to any collateral securing the Guaranty or any other guaranty, including, but not limited to, judicial foreclosure, exercise of a power of sale or taking of a deed or assignment in lieu of foreclosure as to any collateral, and Guarantor shall be liable to Lender for any deficiency resulting from the exercise by Lender of any such remedy, even though any rights which Guarantor may have against others may be diminished or destroyed. In connection with this waiver, Guarantor understands and acknowledges that: absent the foregoing waiver, Guarantor may have certain defenses to enforcement of the Guaranty. Guarantor may have no right of reimbursement against Borrower for any amounts Guarantor may pay under the Guaranty. Nonetheless, understanding and acknowledging the aforesaid, Guarantor fully and knowingly waives the benefit of any such defense and accepts the potential loss of a right of reimbursement against Borrower;

3.11 Waive Enforcement. Waive or fail to enforce or delay in enforcing any of the terms, covenants or conditions of this Guaranty or any of the Loan Documents or any other agreement entered into in connection with this transaction, and any modifications of any such agreement or other document; and

3.12 All Sums Received. Apply any sums received from Guarantor or from the sale of collateral granted by Guarantor to secure any of the amounts owing under this Guaranty in any order regardless of whether the amounts owing are secured by collateral or not. Guarantor waives any defense based upon its loss of a right against Borrower arising from Lender's election of a remedy on the amounts owed under bankruptcy or other Borrower relief laws.

4. WAIVERS. Guarantor fully, irrevocably, absolutely and unconditionally waives:

4.1 Demand for Payment. Diligence and demand for payment, all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor and notices of acceptance of this Guaranty.

4.2 Proceed Against Borrower. Any right to require Lender to proceed against Borrower or any other person at any time or to proceed against or exhaust any security held by Lender at any time or to pursue any other remedy whatsoever at any time.

4.3 Statute of Limitations. The defense of any statute of limitations affecting the liability of Guarantor under this Guaranty or the enforcement thereof, to the extent permitted by law.

4.4 Invalidity/Unenforceability. Any defense arising by reason of any invalidity or unenforceability of the Obligations or any writing or instrument evidencing or securing the Obligations or any disability of Borrower, or by any cessation from any cause whatsoever of the liability of Borrower.

4.5 Disclosure of Financial Interest of Borrower. Any duty of Lender to advise Guarantor of any information known to Lender regarding the financial condition of Borrower (it is agreed that Guarantor assumes the responsibility for being and keeping informed regarding such condition).

4.6 Subrogation. Any right of subrogation and any right to enforce any remedy which Lender now has or may hereafter have against Borrower and any benefit of, and any right to participate in, any security now or hereafter held by Lender. Guarantor expressly waives any and all suretyship defenses now or later available to it under the California Civil Code or the California Commercial Code. Without limiting the generality of any other waiver or provision of this Guaranty, Guarantor waives, to the maximum extent such waiver is permitted by law, any and all benefits or defenses arising directly or indirectly under any one or more of (a) California Civil Code §§2799, 2808, 2809, 2810, 2815, 2819, 2820, 2821, 2822, 2838, 2839, 2845, 2846, 2847, 2848, 2849, 2850, 2899, and 3433; and (b) California Commercial Code §3605.

4.7 Notice of Outstanding Obligations of Borrower. Notice of the amount of outstanding obligations of Borrower to Lender from time to time. Additional credit under the Obligations or any writing or instrument evidencing or securing the Obligations may be granted from time to time at the request of Borrower and without further authorization from or notice to Guarantor. Each credit granted to Borrower whether or not in a writing or instrument evidencing or securing the Obligations shall be deemed to have been granted at the instance and request of Guarantor and in consideration of and in reliance on this Guaranty.

4.8 Election Remedies; Notice; Release.

4.8.1 Guarantor waives any defense it may have now or in the future based on any election of remedies by Lender that destroys Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, and Guarantor acknowledges that it shall be liable to Lender even though Guarantor may well have no such recourse against Borrower;

4.8.2 Guarantor waives notice of (a) acceptance and reliance on this Guaranty; (b) notice of renewal, extension, or modification of any Obligation under this Guaranty; and (c) notice of default or demand in the case of default; and

4.8.3 Guarantor waives any right or defense it may now or hereafter have based on (a) Lender's full or partial release of any party who may be obligated to Lender; (b) Lender's full or partial release or impairment of any collateral for the Obligations; and (c) the modification or extension of the Obligations.

4.9 Additional Waivers. To the extent any of the provisions of this Section 4.9 conflict with any of the other provisions of this Guaranty, the terms and provisions of this Section 4.9 shall control. Notwithstanding the foregoing, nothing in this Section 4.9 shall be deemed to contradict or supersede the terms and provisions of Section 7.8 hereof with respect to the governing law applicable to this Guaranty.

[4.9.1 Waiver.⁵ Guarantor expressly waives any and all suretyship defenses that may be available to Guarantor. Without limiting the generality of the foregoing, Guarantor makes the following additional waivers and covenants: Guarantor agrees that its obligations under this Guaranty shall not be subject to any counterclaims, offsets or defenses against Lender or against Borrower of any kind which may arise in the future. Guarantor agrees that nothing contained herein shall prevent Lender from foreclosing on the lien of the Security Instrument or sale by power of sale, or from exercising any rights available to Lender thereunder, and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of Guarantor. Guarantor agrees that it hereby knowingly waives any defense which may arise in the future to enforcement of this Guaranty under any provision of law limiting a Lender's right to a deficiency based on Lender's election to conduct a private, non-judicial foreclosure sale following a default by Borrower even though such an election destroyed, diminished or otherwise affected Guarantor's rights of subrogation against Borrower under a security instrument or the right of contribution, reimbursement or indemnity from any party, with the result that Guarantor's liability under this Guaranty became nonreimbursable in whole or in part. Nevertheless, Guarantor hereby authorizes and empowers Lender to exercise, in its sole discretion, any rights and remedies, or any combination thereof, which may then be available, since it is the intent and purpose of Guarantor that the obligations under this Guaranty shall be absolute, independent and unconditional under any and all circumstances. Without limiting the generality of the foregoing, Guarantor hereby expressly waives any and all benefits under California Civil Code Sections 2809, 2810, 2815, 2819, 2822, 2839, 2845, 2846, 2847, 2848, 2849, 2850, 2899 and 3433. Notwithstanding any foreclosure of the lien of the Security Instrument or security agreement with respect to any or all of any personal property secured thereby by an action for foreclosure, Guarantor shall remain bound under this Guaranty. Guarantor further waives any right to cause a fair value hearing to be conducted under any other provision of law respecting the amount of any deficiency following a foreclosure, and agrees that Guarantor's liability under this Guaranty shall not be limited to the excess of the Obligations over the fair or market value of any collateral which secured the indebtedness of Borrower. Nothing shall discharge or satisfy the liability of Guarantor under this Guaranty except the full performance and payment of the Obligations of Borrower with interest. Guarantor further waives any rights, defenses, and benefits that

⁵ Use the following Sections 4.9.1 and 4.9.2 if NOT secured by Real Estate.

are or may become available to Guarantor by reason of California Civil Code Sections 2787 to 2855, inclusive.

4.9.2 [Additional Waivers. In addition to and not in limitation of the other waivers agreed to and made by Guarantor set forth in this Guaranty, and pursuant to the provisions of Section 2856 of the California Civil Code, Guarantor acknowledges and understands that if Lender forecloses against any property security for the Loan, that foreclosure could impair or destroy any ability that Guarantor may have to seek reimbursement, contribution or indemnification from Borrower or others based on any right Guarantor may have of subrogation, reimbursement, contribution or indemnification for any amounts paid by Guarantor under this Guaranty. Guarantor further understands and acknowledges that in the absence of this provision, the potential impairment or destruction of Guarantor's rights, if any, may entitle Guarantor to assert a defense to this Guaranty. By executing this Guaranty, Guarantor freely, irrevocably and unconditionally: (1) waives and relinquishes that defense, and agrees that Guarantor will be fully liable under this Guaranty, even though Lender may foreclose against any property security for the Loan; (2) agrees that Guarantor will not assert that defense in any action or proceeding that Lender may commence to enforce this Guaranty; (3) acknowledges and agrees that the rights and defenses waived by Guarantor under this Guaranty include any right or defense that Guarantor may have or be entitled to assert based upon or arising out of any one or more of the following: (A) any provision of law which may limit Guarantor's liability after any foreclosure sale to the difference between the obligations for which Guarantor is liable and the fair market value of the property or interests sold at such foreclosure sale rather than the actual proceeds of such sale, (B) any provision of law which may limit Lender's right to recover a deficiency judgment with respect to purchase money obligations and after any foreclosure sale, or (C) any provision of law which may require Lender to exhaust all of its security before a personal judgment may be obtained for a deficiency; and (4) acknowledges and agrees that Lender is relying on this waiver in making the Loan, and that this waiver is a material part of the consideration that Lender is receiving for making the Loan.]

[4.9.1 Waiver.⁶ Guarantor expressly waives any and all suretyship defenses that may be available to Guarantor. Without limiting the generality of the foregoing, Guarantor makes the following additional waivers and covenants: Guarantor agrees that its obligations under this Guaranty shall not be subject to any counterclaims, offsets or defenses against Lender or against Borrower of any kind which may arise in the future. Guarantor agrees that nothing contained herein shall prevent Lender from foreclosing on the lien of the Security Instrument or sale by power of sale, or from exercising any rights available to Lender thereunder, and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of Guarantor. Guarantor agrees that it hereby knowingly waives any defense which may arise in the future to enforcement of this Guaranty under California Code of Civil Procedure Sections 580b, 580d, 580a and 726 (or any other statute limiting a Lender's right to a deficiency) based on Lender's election to conduct a private, non-judicial foreclosure sale following a default by Borrower even though such an election destroyed, diminished or otherwise

⁶ Use the following Sections 4.9.1 and 4.9.2 only if secured by Real Estate.

affected Guarantor's rights of subrogation against Borrower or other trustor under a deed of trust or the right of contribution, reimbursement or indemnity from any party, with the result that Guarantor's liability under this Guaranty became nonreimbursable in whole or in part. Nevertheless, Guarantor hereby authorizes and empowers Lender to exercise, in its sole discretion, any rights and remedies, or any combination thereof, which may then be available, since it is the intent and purpose of Guarantor that the obligations under this Guaranty shall be absolute, independent and unconditional under any and all circumstances. Without limiting the generality of the foregoing, Guarantor hereby expressly waives any and all benefits under California Civil Code Sections 2809, 2810, 2815, 2819, 2822, 2839, 2845, 2846, 2847, 2848, 2849, 2850, 2899 and 3433 and California Code of Civil Procedure Sections 580b, 580a, 580d and 726. Notwithstanding any foreclosure of the lien of the Security Instrument or security agreement with respect to any or all of any real or personal property secured thereby, whether by the exercise of the power of sale contained therein, by an action for judicial foreclosure or by an acceptance of a deed in lieu of foreclosure, Guarantor shall remain bound under this Guaranty. Guarantor further waives any right to cause a fair value hearing to be conducted under Code of Civil Procedure Section 580a, or any other provision of law respecting the amount of any deficiency following a non-judicial foreclosure, and agrees that Guarantor's liability under this Guaranty shall not be limited to the excess of the Obligations over the fair or market value of any real property which secured the indebtedness of Borrower. Nothing shall discharge or satisfy the liability of Guarantor under this Guaranty except the full performance and payment of the Obligations of Borrower with interest. Guarantor further waives any rights, defenses, and benefits that are or may become available to Guarantor by reason of California Civil Code Sections 2787 to 2855, inclusive.

4.9.2 [Additional Waivers]. In addition to and not in limitation of the other waivers agreed to and made by Guarantor set forth in this Guaranty, and pursuant to the provisions of Section 2856 of the California Civil Code, Guarantor acknowledges and understands that if Lender forecloses judicially or nonjudicially against any real property security for the Loan, that foreclosure could impair or destroy any ability that Guarantor may have to seek reimbursement, contribution or indemnification from Borrower or others based on any right Guarantor may have of subrogation, reimbursement, contribution or indemnification for any amounts paid by Guarantor under this Guaranty. Guarantor further understands and acknowledges that in the absence of this provision, the potential impairment or destruction of Guarantor's rights, if any, may entitle Guarantor to assert a defense to this Guaranty based on California Code of Civil Procedure Section 580d as interpreted in *Union Bank vs. Gradsky*, to the extent applicable. By executing this Guaranty, Guarantor freely, irrevocably and unconditionally: (1) waives and relinquishes that defense, and agrees that Guarantor will be fully liable under this Guaranty, even though Lender may foreclose judicially or nonjudicially against any real property security for the Loan; (2) agrees that Guarantor will not assert that defense in any action or proceeding that Lender may commence to enforce this Guaranty; (3) acknowledges and agrees that the rights and defenses waived by Guarantor under this Guaranty include any right or defense that Guarantor may have or be entitled to assert based upon or arising out of any one or more of the following: (A) California Code of Civil Procedure Sections 580a (which if Guarantor had not given this waiver, would

otherwise limit Guarantor's liability after any nonjudicial foreclosure sale to the difference between the obligations for which Guarantor is liable and the fair market value of the property or interests sold at such nonjudicial foreclosure sale rather than the actual proceeds of such sale), 580b and 580d (which if Guarantor had not given this waiver, would otherwise limit Lender's right to recover a deficiency judgment with respect to purchase money obligations and after any nonjudicial foreclosure sale, respectively), or 726 (which, if Guarantor had not given this waiver, among other things, would otherwise require Lender to exhaust all of its security before a personal judgment may be obtained for a deficiency); or (B) California Civil Code Section 2848; and (4) acknowledges and agrees that Lender is relying on this waiver in making the Loan, and that this waiver is a material part of the consideration that Lender is receiving for making the Loan.]

4.10 REAL PROPERTY COLLATERAL. WITHOUT LIMITING THE FOREGOING OR ANYTHING ELSE CONTAINED IN THIS GUARANTY, GUARANTOR WAIVES ALL RIGHTS AND DEFENSES THAT GUARANTOR MAY HAVE BECAUSE THE LOAN IS SECURED BY REAL PROPERTY. THIS MEANS, AMONG OTHER THINGS:

4.10.1 THAT LENDER MAY COLLECT FROM GUARANTOR WITHOUT FIRST FORECLOSING ON ANY REAL OR PERSONAL PROPERTY COLLATERAL PLEDGED BY BORROWER; AND

4.10.2 IF LENDER FORECLOSURES ON ANY REAL PROPERTY COLLATERAL PLEDGED BY BORROWER: (X) THE AMOUNT OF THE LOAN 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 (Y) LENDER MAY COLLECT FROM GUARANTOR EVEN IF LENDER, BY FORECLOSING ON THE REAL PROPERTY COLLATERAL, HAS DESTROYED ANY RIGHT GUARANTOR MAY HAVE TO COLLECT FROM BORROWER.

THIS SECTION 4.10 IS AN UNCONDITIONAL AND IRREVOCABLE WAIVER OF ANY RIGHTS AND DEFENSES GUARANTOR MAY HAVE BECAUSE THE LOAN 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 CALIFORNIA CODE OF CIVIL PROCEDURE.]⁷

5. REMEDIES

5.1 Rights and Remedies of Lender. Guarantor understands that the exercise by Lender of certain rights and remedies contained in any writing or instrument evidencing or securing the Obligations may affect or eliminate Guarantor's rights of subrogation against Borrower and that Guarantor may therefore incur partially or totally non-reimbursable liability under this Guaranty; nevertheless, Guarantor hereby authorizes and empowers Lender, its successors, endorsees and/or assignees, to exercise in its or their sole discretion, any rights and remedies, or any combination thereof, which may then be available, it being the purpose and

⁷ Only include this Section 4.10 if secured by Real Estate.

intent of Guarantor that Guarantor's obligations under this Guaranty shall be absolute, independent and unconditional under any and all circumstances.

5.2 Subordination. Any and all indebtedness of Borrower now or hereafter held by Guarantor is hereby subordinated to the obligations guaranteed hereby and shall not be paid in whole or in part without the prior written consent of Lender, nor shall Guarantor accept any payment of all or any part of such indebtedness while this Guaranty is in effect. Any such indebtedness of Borrower to Guarantor is hereby assigned to Lender as security for the performance of this Guaranty and the payment of the Obligations. At Lender's request, Guarantor shall pay to Lender all or any part of such subordinated indebtedness. Any payment by Borrower to Guarantor in violation of this Guaranty shall be received by Guarantor in trust for Lender and shall be paid to Lender immediately upon demand. Any such payment shall be applied against Borrower's obligations to Lender, but shall not otherwise reduce or affect in any manner the liability of Guarantor under this Guaranty.

5.3 Bankruptcy. Guarantor hereby agrees that in the event any bankruptcy, insolvency, reorganization, liquidation or similar proceeding is instituted against Borrower, whether voluntary or involuntary, Lender shall have the right to: (1) file claims in any such proceeding on behalf of Guarantor if Guarantor fails to file such claims; (2) vote Guarantor's claims in any such proceeding and (3) receive interest on the Obligations accruing after the filing of a petition or other document to institute any such proceeding to the extent of Guarantor's claims against Borrower. Guarantor will file all claims against Borrower in any bankruptcy or other proceeding in which the filing of claims is required by law on any indebtedness of Borrower to Guarantor and will assign to Lender all rights of Guarantor on any such indebtedness. If Guarantor does not file any such claim, Lender, as attorney-in-fact for Guarantor, is authorized to do so in the name of Guarantor, or, at Lender's discretion, to assign the claim and to file a proof of claim in the name of Lender's nominee. In all such cases, whether in bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Lender the full amount of any such claim and to the full extent necessary for that purpose, Guarantor assigns to Lender all of Guarantor's rights to any such payments or distributions to which Guarantor may otherwise be entitled. So long as any obligations shall be owing to Lender, Guarantor shall not, without the prior written consent of Lender, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Borrower. Guarantor hereby agrees on Guarantor's own behalf, and on behalf of Guarantor's heirs, legal representatives, successors and assigns, that Guarantor will consent to and not contest or otherwise oppose any action or motion by or on behalf of Lender for relief from the automatic stay provided in Section 362 of the U.S. Bankruptcy Code or any applicable successor statute thereto (including without limitation any stay against actions against non-Borrower parties). Guarantor further agrees that any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Guarantor or Borrower, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not Guarantor shall have had notice or knowledge of any of the foregoing, shall not impair Guarantor's obligations under this Guaranty.

5.4 Termination. This Guaranty shall terminate when all obligations and all indebtedness of Borrower under the Loan Documents and all fees, expenses, payments and

obligations due and owing by Guarantor under this Guaranty have been fully paid and performed.

6. PAYMENTS

6.1 Offsetting Payments. In addition to any other rights Lender may have at law or in equity, if any amount shall at any time be due or owing by Guarantor to Lender under this Guaranty, any obligation from Lender to Guarantor, or any other property of Guarantor held by Lender, may be offset and applied toward the payment of the amounts due or owing to Lender.

6.2 Application of Payments. It is understood that Lender, without impairing this Guaranty, may apply payments from Borrower to the Obligations in such amounts and in such order as Lender in its complete discretion determines.

6.3 Assignment by Lender. Lender may at any time and from time to time assign, conditionally or otherwise, all of the rights of Lender concerning the Obligations or this Guaranty, whereupon such assignee shall succeed to all rights of Lender to the extent that such rights may be assigned to it. Lender, and each assignee of Lender, may give written notice to Guarantor of any such assignment, but any failure to give, or delay in giving, such notice shall not affect the obligations of Guarantor under this Guaranty nor affect the validity or enforceability of any such assignment.

7. MISCELLANEOUS

7.1 Independent Obligations. The obligations of Guarantor under this Guaranty are independent of the obligations of Borrower and, in the event of any default under this Guaranty, a separate action or actions may be brought and prosecuted against Guarantor whether or not Guarantor is the alter ego of Borrower and whether or not Borrower is joined therein or a separate action or actions are brought against Borrower.

7.2 Severability. This Guaranty shall not terminate solely by reason of any of its provisions being declared invalid or unenforceable. If any provision hereof is or becomes invalid or unenforceable, the remaining provisions hereof shall be unimpaired and the invalid or unenforceable provision shall be replaced by a provision that is valid and enforceable and that comes closest to the intention of the invalid or unenforceable provision.

7.3 Captions. Any captions to or headings of the articles, sections, subsections, paragraphs or subparagraphs of this Guaranty are solely for the convenience of the Parties, are not part of this Guaranty and shall not be used for interpretation or determination of the validity of this Guaranty or any provision of this Guaranty.

7.4 Entire Agreement; Amendment. The making, execution and delivery of this Guaranty has not been induced by any representations, statements, warranties or agreements other than those expressed in this Guaranty. This Guaranty embodies the entire understanding of the Guarantor, and there are no further or other agreements or understandings, written or oral, in effect relating to the subject matter of this Guaranty, unless expressly referred to by reference in this Guaranty. This Guaranty supersedes and terminates any previous oral or written agreements with respect to the subject matter of this Guaranty, and any such prior agreement is null and void.

This Guaranty may be amended or modified only by an instrument in writing signed by both Lender and Guarantor.

7.5 Waiver of Provisions. Any waiver of any terms, covenants and/or conditions of this Guaranty must be in writing and signed by the Parties to this Guaranty. A waiver of any of the terms, covenants or conditions of this Guaranty shall not be construed as a waiver of any other terms, covenants or conditions of this Guaranty, nor shall any waiver constitute a continuing waiver.

7.6 Assignment. This Guaranty shall bind and inure to the benefit of Lender and Guarantor and their respective successors and assigns; provided however, that Guarantor may not assign its rights nor delegate its duties under this Guaranty without the prior written consent of Lender. Lender may assign this Guaranty, and the holder of this Guaranty shall become the Lender.

7.7 Notices. Any communications between the Parties or notices or requests required or permitted to be given herein shall be in writing and shall be deemed to have been given or made on (a) the date on which it is delivered personally, (b) three (3) business days after it is deposited in the United States mail, certified, return receipt requested, or (c) one (1) business day after it is sent by Federal Express (or other reputable overnight carrier) with postage prepaid and properly addressed, to the following addresses or at such other addresses as may be later designated by the Party:

If to Lender: _____

With copies to: _____

To Guarantor: _____

7.8 Governing Law. This Guaranty shall be governed by and construed according to the laws of the State of California, and any action arising out of it shall be instituted and prosecuted only in a court of proper jurisdiction in the County of Orange. Whenever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty is prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty. This Guaranty shall be given a fair and reasonable construction in accordance

with the intention of the Parties and without regard to or aid of any presumption against the party that caused this Guaranty to be drafted.

7.9 Attorneys' Fees. In the event that any action, including mediation or arbitration, is brought by either party to this Guaranty to enforce or interpret the terms of this Guaranty, the prevailing party in such action shall be entitled to its costs and reasonable attorneys' fees and costs (including allocated costs of in-house counsel) incurred therein from the nonprevailing party, in addition to such other relief as the court or arbitrator may deem appropriate.

7.10 Gender And Number. Whenever the context of this Guaranty requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and plural.

7.11 Revival of Guaranty. If a claim (“**Claim**”) is made on Lender at any time (whether before or after payment or performance in full of any Obligation, and whether such claim is asserted in a bankruptcy proceeding or otherwise) for repayment or recovery of any amount or other value received by Lender (from any source) in payment of, or on account of, any Obligation and if Lender repays such amount, returns value or otherwise becomes liable for all or part of such Claim by reason of (a) any judgment, decree, or order of any court or administrative body or (b) any settlement or compromise of such Claim, Guarantor shall remain severally liable to Lender for the amount so repaid or returned or for which Lender is liable to the same extent as if such payments or value had never been received by Lender, despite any termination of this Guaranty or the cancellation of any note or other document evidencing any Obligation.

7.12 WAIVER OF JURY TRIAL. LENDER AND GUARANTOR WAIVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LITIGATION OR PROCEEDING WITH RESPECT TO, IN CONNECTION WITH, OR ARISING FROM THIS GUARANTY OR THE LINE OF CREDIT, OR ANY INSTRUMENT OR DOCUMENT DELIVERED IN CONNECTION WITH THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HERE, OR THE GUARANTY'S VALIDITY, PROTECTION, INTERPRETATION, COLLECTION, OR ENFORCEMENT, OR ANY OTHER CLAIM OR DISPUTE HOWSOEVER ARISING (INCLUDING TORT AND CLAIMS FOR BREACH OF DUTY) BETWEEN LENDER AND GUARANTOR.

7.13 Ambiguities Not to be Construed Against Drafting Party. The doctrine that any ambiguity contained in a contract shall be construed against the party whose counsel has drafted the contract is expressly waived by each of the Parties with respect to this Guaranty.

7.14 Execution of Guaranty. This Guaranty was executed voluntarily without any duress or undue influence on the part of or on behalf of the Guarantor. Guarantor acknowledges that it has read and understood this Guaranty, its legal effect and its tax ramifications, and acknowledges that it has had a reasonable opportunity to obtain independent legal counsel for advice and representation in connection with this Guaranty, and that it is not relying on the legal counsel employed by any of the other Parties.

7.15 Joint and Several. In the event Guarantor is composed of more than one party, the obligations, covenants, guaranties and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

[Signature page follows]

[Signature page]

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the date first set forth above at _____, [California].

GUARANTOR:

[COMPLETE LEGAL NAME OF
GUARANTOR]

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____