

CONTINUING GUARANTY

THIS CONTINUING GUARANTY ("Guaranty"), dated as of _____ [date], is made by _____ [guarantor's name and capacity] ("Guarantor") in favor of _____ [lender's name and capacity] ("Lender").

Recitals A. _____ [Borrower's name and capacity] ("Borrower") has applied to Lender for a loan ("Loan") of up to _____ Dollars (\$_____) ("Loan"). The Loan will be evidenced by _____ [state name of promissory note, for example: Promissory Note Secured by Deed of Trust] ("Note"), dated as of the same date as this Guaranty and executed by Borrower in favor of Lender in the principal amount of _____ Dollars (\$_____), which loan will be secured by, among other security, the _____ [state name of deed of trust, for example: Deed of Trust, Security Agreement, and Fixture Filing with Assignment of Rents and Agreements], dated as of the same date as this Guaranty ("Deed of Trust"), executed by Borrower in favor of Lender, and covering the real property described in the Deed of Trust ("Property"). Collectively such documents are known as the "Loan Documents."

B. As a condition to making the Loan, Lender has required that Guarantor execute and deliver this Guaranty.

Now, therefore, in order to induce Lender to enter into the Loan Agreement and to make the Loan, and in consideration thereof, Guarantor hereby agrees as follows:

Section 1. Guaranty. Guarantor absolutely and unconditionally guarantees the punctual payment when due, whether at stated maturity, by acceleration, or otherwise, of all obligations of Borrower now or later existing under the Loan Documents (defined in the Deed of Trust) whether for principal, interest, fees, expenses, or otherwise including, without limitation, all real property taxes and assessments affecting the Property, all costs and expenses, including insurance premiums, of maintaining in full force all policies of insurance required pursuant to the Deed of Trust, and all costs and expenses, including repair and maintenance costs, required in order to maintain the Property in the condition required under the Deed of Trust ("Obligations"). The terms "indebtedness" and "obligations" are used in their most comprehensive sense and include all debts, obligations, and liabilities of Borrower incurred or created, with or without notice to Guarantor, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether Borrower is liable individually or jointly with others, and whether recovery on any indebtedness or obligations is now or later becomes barred by any statute of limitations or is or later becomes otherwise unenforceable.

Section 2. Guaranty Absolute. (a) Guarantor guarantees that the Obligations will be paid and performed strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation, or order now or later in effect in any jurisdiction affecting any of the terms or the rights of Lender with respect to that. The liability of Guarantor under this Guaranty will be absolute and unconditional irrespective of:

- (i) any lack of validity or enforceability of any of the Loan Documents (or any other agreement or instrument relating to the Loan Documents);
- (ii) any change in the time, manner, or place of payment of, or in any other term of, any of the Obligations, or any other amendment or waiver of or any consent to departure from any of the Loan Documents, including, without limitation, changes in the terms of disbursement of the Loan proceeds or repayment, modifications, extensions (including extensions beyond and after the original term), or renewals of payment dates, changes in interest rate, or the advancement of additional funds by Lender in its discretion;
- (iii) any exchange, release, or nonperfection of any collateral, or any release or amendment or waiver of or consent to departure from any other guaranty, for any of the Obligations; or
- (iv) any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower in respect of the Obligations of Guarantor under this Guaranty.

(b) Regardless of any termination of this Guaranty or the cancellation of the Note or any other agreement evidencing the Obligations, if at any time any payment of any of the Obligations (from any source) is

rescinded, repaid, or must otherwise be returned by Lender due to the insolvency, bankruptcy, or reorganization of Borrower or Guarantor, or for any other circumstance, this Guaranty will continue to be effective or be reinstated, as the case may be, as though that payment had not been made.

Section 3. Guaranty Independent; Waivers. (a) Guarantor agrees that:

(i) the obligations under this Guaranty are joint and several and are independent of and in addition to the undertakings of Borrower pursuant to the Loan Documents, any evidence of indebtedness issued in connection with the Loan, any deed of trust or security agreement given to secure the Loan, any other guarantees given in connection with the Loan, and any other obligations of Guarantor to Lender;

(ii) a separate action may be brought to enforce the provisions of this Guaranty whether Borrower is a party in any action or not;

(iii) Lender may at any time, or from time to time, in its sole discretion:

(A) extend or change the time of payment or performance or the manner, place, or terms of payment or performance of any of the Obligations;

(B) exchange, release, or surrender any of the collateral security, or any part of it, by whomever deposited, which is now or may later be held by Lender in connection with any of the Obligations;

(C) sell or purchase any of the collateral at public or private sale, or at any broker's board, in the manner permitted by law, and after all costs and expenses of every kind for collection, sale, or delivery, the net proceeds of any sale may be applied by Lender on any of the Obligations; and

(D) settle or compromise with Borrower, or any other person liable, any of the Obligations, or subordinate the payment of it, or any part of it, to the payment of any other debts or claims, that may at any time be due or owing to Lender or any other person or corporation; and

(iv) Lender will be under no obligation to marshal any assets in favor of Guarantor or in payment of any of the Obligations.

(b) Guarantor waives:

(i) presentment, demand, protest, notice of acceptance, notice of dishonor, notice of nonperformance, and any other notice with respect to any of the Obligations and this Guaranty, and promptness in commencing suit against any party, or in giving any notice to or making any claim or demand on Guarantor;

(ii) any right to require Lender to proceed against Borrower, proceed against or exhaust any security held from Borrower, or pursue any remedy in Lender's power;

(iii) any defense based on any legal disability or other defense of Borrower, any other guarantor, or other person or by reason of the cessation or limitation of the liability of Borrower from any cause other than full payment of all sums payable under the Note and the performance of the other Obligations;

(iv) any defense based on any lack of authority of the officers, directors, partners, or agents purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower;

(v) to the fullest extent permitted by law, all rights and benefits under Civil Code § 2809 purporting to reduce a guarantor's obligations in proportion to the principal obligation;

(vi) any defense based on the application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Lender or intended or understood by Lender or Guarantor;

(vii) any defense it may acquire by reason of Lender's election of any remedy against it or Borrower or both, including, without limitation, election by Lender to exercise its rights under the power of sale in the Deed of Trust and the consequent loss by Guarantor of the right to recover any deficiency from Borrower;

(viii) any defense based on Lender's failure to disclose to Guarantor any information concerning Borrower's financial condition or any other circumstances bearing on Borrower's ability to pay all sums payable under the Note or any of the other Obligations;

(ix) any defense based on any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal;

(x) any defense based on Lender's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute;

(xi) any defense based on any borrowing or any grant of a security interest under § 364 of the Federal Bankruptcy Code;

(xii) any right of subrogation, contribution, or reimbursement against Borrower, any right to enforce any remedy that Lender has or may in the future have against Borrower, any other right that Lender may now or later acquire against Borrower that arises from the existence or performance of Guarantor's obligations under this

Guaranty or would arise with respect to the Obligations, and any benefit of, and any right to participate in, any security for the Obligations now or in the future held by Lender;

(xiii) the benefit of any statute of limitations affecting the liability of Guarantor or the enforcement of the Guaranty, including, without limitation, any rights arising under Code of Civil Procedure § 359.5; and

(xiv) to the fullest extent permitted by law, all rights and benefits under Code of Civil Procedure § 580a, purporting to limit the amount of any deficiency judgment that might be recoverable following the occurrence of a trustee's sale under a deed of trust; Code of Civil Procedure § 580b, stating that no deficiency may be recovered on a real property purchase money obligation; and Code of Civil Procedure § 580d, stating that no deficiency may be recovered on a note secured by a deed of trust on real property in case the real property is sold under the power of sale contained in the deed of trust, if those statutory sections have any application.

Guarantor agrees that the payment of all sums payable under the Note or any of the other Obligations or any other act that tolls any statute of limitations applicable to the Note or the other Obligations will similarly operate to toll the statute of limitations applicable to Guarantor's liability. Without limiting the generality of the foregoing or any other provision of this Guaranty, Guarantor expressly waives all benefits that might otherwise be available to Guarantor under Civil Code §§2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899, and 3433, Code of Civil Procedure §§580a, 580b, 580d, and 726, or similar sections.

(c) 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 the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise. Furthermore, Guarantor understands and acknowledges that if Bank 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 Code of Civil Procedure § 580d, as interpreted in *Union Bank v. Gradsky* (1968) 265 Cal.App.2d 40, 71 Cal.Rptr. 64. By executing this Guaranty, Guarantor freely, irrevocably, and unconditionally:

(i) waives and relinquishes that defense, and agrees that Guarantor will be fully liable under this Guaranty even though Bank may foreclose judicially or nonjudicially against any real property security for the Loan;

(ii) agrees that Guarantor will not assert that defense in any action or proceeding that Bank may commence to enforce this Guaranty;

(iii) acknowledges and agrees that the rights and defenses waived by Guarantor under this Guaranty include any right or defense the Guarantor may have or be entitled to assert based upon or arising out of any one or more of Code of Civil Procedure §§580a, 580b, 580d, or 726, or Civil Code § 2848; and

(iv) acknowledges and agrees that Bank is relying on this waiver in making the Loan, and that this waiver is a material part of the consideration that Bank is receiving for making the Loan.

Section 4. Does Not Supersede Other Guarantees. The obligations of Guarantor will be in addition to any obligations of Guarantor under any other guarantees of the Obligations or any obligations of Borrower or any other persons or entities previously given or later to be given to Lender, and this Guaranty will not affect or invalidate any other guarantees. The liability of Guarantor to Lender will at all times be deemed to be the aggregate liability of Guarantor under the terms of this Guaranty and of any other guarantees previously or later given by Guarantor to Lender.

Section 5. Representations and Warranties. Guarantor represents and warrants as follows:

(a) Power and Authority.

(i) Guarantor has the requisite power and authority to execute and deliver this Guaranty, and thus, even if the guaranty is not enforceable as a contract, it may be enforceable on a theory of equitable estoppel.

(ii) Guarantor is a _____ [set forth guarantor's capacity, for example: California corporation] organized, validly existing in good standing under the laws of the jurisdiction of its organization, and qualified to do business in California.

(b) Validity of Guaranty.

(i) The execution, delivery, and performance by Guarantor of this Guaranty are within the power of Guarantor, have been duly authorized by all requisite corporate or partnership action, as appropriate, have received all necessary governmental approval, and will not violate any provision of law, any order of any court or agency of government, the _____ [set forth documents governing the formation of the guarantor, such as: the Articles of Incorporation and Bylaws or Partnership Agreement] of Guarantor, or any indenture, agreement, or any other instrument to which Guarantor is a party or by which Guarantor or its property is bound, or be in conflict with, result in a breach of, or constitute (with due notice and lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge, or encumbrance of any nature on any of its property or assets, except as contemplated by the provisions of the Loan Documents.

(ii) This Guaranty, when delivered to Lender, will constitute a legal, valid, and binding obligation enforceable against Guarantor in accordance with its terms.

(c) Financial Statements.

(i) All financial statements and data that have been given to Lender by Guarantor with respect to Guarantor:

(A) are complete and correct in all material respects as of the date given;

(B) accurately present the financial condition of Guarantor on each date as of which and the results of Guarantor's operations for the periods for which they have been furnished; and

(C) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered.

(ii) All balance sheets and the notes that Guarantor furnished to Lender disclose all material liabilities of Guarantor, fixed and contingent, as of their respective dates.

(iii) There has been no adverse change in the financial condition or operations of Guarantor since:

(A) the date of the most recent financial statement given to Lender with respect to Guarantor; or

(B) the date of the financial statement given to Lender immediately prior to the date of this Guaranty, other than changes in the ordinary course of business, none of which have been materially adverse individually or in the aggregate.

(d) Other Arrangements. Guarantor is not a party to any agreement or instrument materially and adversely affecting Guarantor's present or proposed business, properties, or assets, or operations or conditions (whether financial or otherwise); and Guarantor is not in default in the performance, observance, or fulfillment of any of the material obligations, covenants, or conditions in any agreement or instrument to which Guarantor is a party.

(e) Other Information. All other reports, papers, and written data and information given to Lender by Guarantor with respect to Guarantor are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Lender a true and accurate knowledge of the subject matter.

(f) Litigation. There is not now pending against or affecting Guarantor, nor to the knowledge of Guarantor is there threatened, any action, suit, or proceeding at law or in equity or by or before any administrative agency that, if adversely determined, would materially impair or affect the financial condition or operations of Guarantor.

(g) Taxes. Guarantor has filed all federal, state, provincial, county, municipal, and other income tax returns required to have been filed by Guarantor and has paid all taxes that have become due pursuant to the returns or pursuant to any assessments received by Guarantor, and Guarantor does not know of any basis for any material additional assessment against it in respect of those taxes.

Section 6. Affirmative Covenants. Guarantor covenants and agrees that, so long as any part of the Indebtedness (defined in the Deed of Trust) remains unpaid, Guarantor will do the following, unless Lender otherwise consents in writing:

(a) Taxes Affecting Guarantor. File all federal, state, provincial, county, municipal, and other income tax returns required to be filed by it and pay, before they become delinquent, all taxes that become due pursuant to those returns or pursuant to any assessments received by it.

(b) Compliance with Law. Promptly and faithfully comply with all laws, ordinances, rules, regulations, and requirements, both present and future, of every governmental authority or agency having jurisdiction that may be applicable to it.

(c) Books and Records. Maintain complete books of accounts and other records reflecting the results of its operations, in a form reasonably satisfactory to Lender, and furnish to Lender any information about the financial condition of Guarantor that Lender reasonably requests, including, but not limited to, the following information, which will be furnished without request:

(i) immediately on availability, but in any case not later than sixty (60) days after the close of each fiscal year of Guarantor:

(A) a balance sheet of Guarantor as at the close of the fiscal year of Guarantor, and

(B) statements of income and expense and change in financial condition of Guarantor for the fiscal year (each will set forth in comparable form the corresponding figures of the previous period, will be in reasonable detail, and will be certified by the chief financial officer of Guarantor); and

(ii) any other information or data that Lender may reasonably request.

Lender will have the right, at all reasonable times and on reasonable notice, to audit (at Guarantor's sole cost and expense) Guarantor's books of account and records, all of which will be made available to Lender or Lender's representatives for that purpose, from time to time, on Lender's request.

Section 7. Amendments or Waiver. No amendment or waiver of any provision of this Guaranty or consent to any departure from any provision by Guarantor will be effective unless it is in writing and signed by Lender, and then the waiver or consent will be effective only in the specific instance and for the specific purpose for which it is given. No notice to or demand on Guarantor will in any case entitle it to any other or further notice or demand in similar or other circumstances.

Section 8. Notices. All notices that may be required or otherwise provided for or contemplated under the terms of this Guaranty for any party to serve on or give to any other, will, whether so stated, be in writing, and if not in writing, will not be deemed to have been given, and be either personally served or sent with return receipt requested by registered or certified mail with postage prepaid (including registration or certification charges) in a securely enclosed and sealed envelope, sent to the following addresses:

If to Guarantor, addressed to:

_____ [Guarantor's address for notices]

If to Lender, addressed to:

_____ [Lender's address for notices].

These addresses may be changed from time to time by written notice to the other parties given in the same manner. Any matter served on or sent to Guarantor or Lender in this manner will be deemed sufficiently given for all purposes on the date three (3) days following the date it was deposited in a United States Post Office, except that notices of changes of address will not be effective until actual receipt.

Section 9. No Waiver; Remedies. No failure on the part of Lender to exercise and no delay in exercising any right or remedy will operate as a waiver; nor will Lender be estopped to exercise any right or remedy at any future time because of any failure or delay; nor will any single or partial exercise of any right or remedy preclude any other or further exercise or the exercise of any other right or remedy. The remedies provided are cumulative and not exclusive of any remedies provided by law.

Section 10. Right of Setoff. Lender is authorized at any time and from time to time, without notice to Guarantor (any notice being expressly waived by Guarantor), to set off and apply all deposits (general or special, time or demand, provisional or final) 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 of the obligations of Guarantor now or later existing under this Guaranty. Lender agrees promptly to notify Guarantor after any setoff and application, provided that the failure to give notice will not affect the validity of the setoff and application. The rights of Lender under this section are in addition to other rights and remedies (including, without limitation, other rights of setoff) that Lender may have.

Section 11. Continuing Guaranty; Transfer of Note. This Guaranty is a continuing guaranty and will:
(a) subject to the provisions of section 2(b), remain in full force and effect until payment in full of the indebtedness and the Obligations and all other amounts payable under this Guaranty;
(b) be binding on Guarantor; and
(c) inure to the benefit of and be enforceable by Lender and its successors, transferees, and assigns.

Without limiting the generality of the subsection 11(c), Lender may assign or otherwise transfer the Loan Documents to any other Person (defined in the Deed of Trust), and that other Person will become vested with all the rights granted to Lender.

Section 12. Subordination. Any indebtedness of Borrower now or later held by Guarantor is subordinated to the indebtedness of Borrower to Lender, and any indebtedness of Borrower to Guarantor will, if Lender requests, be collected, enforced, and received by Guarantor as trustee for Lender and be paid over to Lender, but without reducing or limiting in any manner the liability of Guarantor under the other provisions of this Guaranty.

Section 13. No Duty. Guarantor assumes the responsibility for keeping informed of the financial condition of Borrower and of all other circumstances bearing on the risk of nonpayment of the Obligations, and agrees that Lender will have no duty to advise Guarantor of any information known to Lender regarding any financial condition or circumstances.

Section 14. Waiver of Right to Trial by Jury. Guarantor waives any right to trial by jury with respect to any action or proceeding:

- (a) brought by Guarantor, Borrower, Lender, or any other Person relating to:
 - (i) the Loan or any understandings or prior dealings between the parties;
 - (ii) this Guaranty; or
 - (iii) the Loan Documents; and
- (b) to which Lender is a party.

Guarantor agrees that this Guaranty constitutes a written consent to waiver of trial by jury pursuant to the provisions of Code of Civil Procedure § 631, and Guarantor appoints Lender its attorney-in-fact, which appointment is coupled with an interest, and Guarantor authorizes Lender in the name, place, and stead of Guarantor to file this Guaranty with the clerk or judge of any court of competent jurisdiction as a statutory written consent to waiver of trial by jury.

_____ [Initials of guarantor]

Section 15. Bankruptcy of Borrower. Regardless of any modification, discharge, or extension of the Obligations or any amendment, modification, stay, or cure of Lender's rights that may occur in any bankruptcy or reorganization case or proceeding concerning Borrower, whether permanent or temporary and whether assented to by Lender, Guarantor agrees that it will be obligated to pay and perform the Obligations and discharge its other obligations in accordance with the terms of the Obligations and the terms of this Guaranty in effect on the date of this Guaranty. Guarantor understands and acknowledges that by virtue of this Guaranty, it has specifically assumed all risks of a bankruptcy or reorganization case or proceeding with respect to Borrower. As an example, and not in any way of limitation, a subsequent modification of the Obligations in any reorganization case concerning Borrower will not affect the obligation of Guarantor to perform the Obligations in accordance with their original terms.

16. Entire Agreement. This Guaranty is intended as a final expression of this agreement of guaranty and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between Guarantor and Lender, no usage of the trade, and no parol or extrinsic evidence of any nature will be used or will be relevant to supplement, explain, contradict, or modify the terms or provisions of this Guaranty.

Section 17. Governing Law. This Guaranty will be governed by and construed in accordance with the laws of California.

Section 18. Attorney Fees. Guarantor agrees to pay all costs, including, without limitation, attorney fees and expenses, incurred by Lender in enforcing the terms of this Guaranty, whether or not suit is filed. Guarantor agrees to indemnify and hold Lender harmless from all liability, loss, damage, or expense (including, without limitation, attorney fees) that it may incur under this Guaranty, or in connection with the making of any of the loans or financial arrangements guaranteed by this Guaranty, the enforcement of any of Lender's rights or remedies, any action taken by Lender under this Guaranty, or by reason or in defense of any claims and demands that may be asserted against Lender arising out of the Collateral.

Section 19. Miscellaneous.

(a) Time is of the essence.

(b) The obligations and promises will be joint and several undertakings of each of the Persons executing this Guaranty, and Lender may proceed against any one or more of those Persons without waiving its right to proceed against any of the others.

(c) Any married person who signs this instrument expressly agrees that recourse may be had against his or her separate property for all of her or his obligations under this Guaranty.

(d) If any term, provision, covenant, or condition or any application is held by a court of competent jurisdiction to be invalid, void, or unenforceable, all provisions, covenants, and conditions and all applications not held invalid, void, or unenforceable will continue in full force and will in no way be affected.

(e) This Guaranty may be executed in any number of counterparts and by different parties in separate counterparts, each of which when executed and delivered will be deemed to be an original, and all counterparts taken together will constitute one and the same instrument.

(f) Section headings in this Guaranty are included for convenience of reference only and do not constitute a part of this Guaranty for any other purpose.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Guaranty as of the date first above written.

[Guarantor's signature, name,
and capacity]