

## GUARANTY

WHEREAS, the undersigned, [\_\_\_\_\_] (and together with [\_\_\_\_\_] ) (called "Guarantor" and collectively called "Guarantors"), are substantially financially or otherwise interested in [\_\_\_\_\_] (the "Property"), and [\_\_\_\_\_] Limited Liability Company/Corporation (herein called "Borrower"), the maker of the Borrower's Note in the principal amount of \$[\_\_\_\_\_] payable to [\_\_\_\_\_] (the "Lender") and its successors and assigns (herein called the "Note"), and it will be of substantial economic benefit to the Guarantors, and each of them, for the Borrower to execute and deliver the Note and borrow the principal sum evidenced thereby and secured by the Mortgage, Deed of Trust or Security Deed therein described (herein called the "Security Instrument"). The Note and the Security Instrument, together with all riders thereto, are collectively referred to herein as the "Loan Documents"

WHEREAS, as a condition to making the Note to Borrower, Lender requires that Guarantor execute this Guaranty.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein,, and for other good and valuable considerations, the receipt and sufficiency of all of which are hereby acknowledged, and in order to induce any person or persons who may be and become the holder of the Note to accept the same, the Guarantors, and each of them, hereby jointly and severally agree as follows:

1. The Guarantors, and each of them, hereby jointly and severally, unconditionally, absolutely and irrevocably guarantee, for the benefit of each and every present and future holder or holders of the Note (all herein called the "Obligees"), 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 principal of, interest on, and all other amounts due at any time under the Note or any other Loan Document, including prepayment penalties, late payment charges, interest charge at the default rate (if applicable), and accrued interest as provided in the Loan Documents, advances, costs and expenses to perform the obligations of Borrower or to protect the Property or the security of the Security Instrument;
  - b. the payment and performance of all other obligations (including indemnity obligations) of Borrower under the Loan Documents;
  - c. all expenses and costs, including reasonable attorneys' fees and expenses, fees and out-of-pocket expenses of expert witnesses and costs of investigation, incurred by Lender as a result of any Event of Default under the Loan Documents or in connection with efforts to collect any amount due under the Loan Documents, or to enforce the provisions of the Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy or insolvency proceeding or any judicial or non-judicial foreclosure proceeding or other exercise by lender of its rights and remedies under any Loan Document (a "Foreclosure Event"), including any action for relief from the automatic stay of any bankruptcy proceeding or Foreclosure Event, to the extent permitted by law; and

- d. all costs and expenses, including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses, incurred by Obligees in enforcing its rights under the Guaranty (1a., 1b., 1c. and 1d. collectively are herein defined as "Indebtedness Hereby Guaranteed").

2. This Guaranty shall be a continuing guaranty, shall be binding upon the Guarantors, and each of them, jointly and severally, and upon their respective heirs, administrators, successors, legal representatives and assigns, and shall remain in full force and effect, and shall not be discharged, impaired or affected by (i) the existence or continuance of any obligation on the part of the Borrower on or with respect to the Indebtedness Hereby Guaranteed, or any obligation under the Note, the Security Instrument or any other Loan Document, or under this Guaranty (collectively, the "Obligations"); (ii) the power or authority (or any lack thereof) of the Borrower to issue the Note or to execute, acknowledge or deliver the Note or the Security Instrument or any other Loan Document; (iii) the validity or invalidity of the Note or the Security Instrument or any other Loan Document; (iv) any defense whatsoever that the Borrower may or might have to the payment of the Indebtedness Hereby Guaranteed or to the performance or observance of any of the terms, provisions, covenants and agreements contained in the Note or the Security Instrument or other Loan Document; (v) any limitation or exculpation of liability on the part of the Borrower; (vi) the existence or continuance of the Borrower as a legal entity; (vii) the transfer by the Borrower of all or any part of the Premises referred to in the Security Instrument (herein called the "Premises") to any other corporation, person or entity; (viii) any sale, pledge, surrender, indulgence, alteration, substitution, exchange, change in, increase in, extension, modification or other disposition of any of the Indebtedness Hereby Guaranteed or Obligations, all of which the Obligees are hereby expressly authorized to make from time to time without notice to the Guarantors or any of them, or to anyone; (ix) the acceptance by the Obligees, or any of them, of any security for, or other guarantees upon, all or any part of the Indebtedness Hereby Guaranteed or Obligations; (x) any failure, neglect or omission on the part of the Obligees, or any of them, to realize or protect any of the Indebtedness Hereby Guaranteed or any collateral or security therefor, or to exercise any lien upon or right or appropriation of any moneys, credits or property of the Borrower toward the liquidation of the Indebtedness Hereby Guaranteed or any application of payments or credits thereon; (xi) any right, claim or offset which Guarantors may have against Borrower; or (xii) any defense (other than the payment of the Indebtedness Hereby Guaranteed and performance of the Obligations in accordance with its terms) that the Guarantors, or any of them, may or might have to their respective undertakings, liabilities and obligations hereunder, each and every such defense being hereby waived by the Guarantors and each of them; it being understood and agreed that this Guaranty, and the undertakings, liabilities and obligations of the Guarantors, and each of them, hereunder, shall not be affected, discharged, impaired or varied by act, omission or circumstance whatsoever (whether or not specifically enumerated above) except the due and punctual payment of the Indebtedness Hereby Guaranteed and performance of the Obligations, and then only to the extent thereof.

The Obligees shall have the exclusive right to determine how, when and what application of payments and credits, if any, shall be made on the Indebtedness Hereby Guaranteed or the Obligations, or any part thereof; and in order to hold the Guarantors, or any of them, liable hereunder, there shall be

no obligation on the part of any Obligee, or anyone, at any time, to proceed against the Borrower, its properties or estates, or to proceed against any other Guarantor, or to resort to any collateral, security, property, liens or other rights or remedies whatsoever.

3. The death of any Guarantor shall not terminate this Guaranty as to any surviving Guarantor, and shall not terminate this Guaranty as to the estate of the deceased Guarantor.

4. The Obligees, or any of them, shall have the right to enforce this Guaranty against any Guarantor for and to the full amount of the Indebtedness Hereby Guaranteed, with or without enforcing or attempting to enforce this Guaranty against any other Guarantor or any security for the obligation of any of them, and whether or not proceedings or steps are pending or have been taken or have been concluded to enforce or otherwise realize upon the obligation or security of the Borrower or any other Guarantor; and the payment of any amount or amounts by any Guarantor, pursuant to his obligation hereunder, shall not in any way entitle such Guarantor, either at law, in equity or otherwise, to any right, title or interest (whether by way of subrogation or otherwise) in and to any of the Indebtedness Hereby Guaranteed, or any principal or interest payments theretofore, then and thereafter at any time made by the Borrower on the Indebtedness Hereby Guaranteed, or made by anyone on behalf of the Borrower, or in and to any security therefor, unless and until the full amount of the Indebtedness Hereby Guaranteed has been fully paid.

5. No release or discharge of any Guarantor shall release or discharge any other Guarantor unless and until all of the Indebtedness Hereby Guaranteed shall have been fully paid and discharged and all Obligations shall have been fully performed; and the failure or refusal of any Guarantor named herein to execute this Guaranty shall not release, affect or reduce the liability of any other Guarantor.

6. No act of commission or omission of any kind, or any time, on the part of any Obligee, in respect to any matter whatsoever, shall in any way affect or impair this Guaranty; and time is of the essence hereof.

7. All diligence in collection or prosecution, and all presentment, demand, protest and/or notice, as to any of the Guarantors, of dishonor and of default and of non-payment and of the creation and existence of any and all of the Indebtedness Hereby Guaranteed or of performance or non-performance of any Obligation, and of any security and collateral therefor, and of the acceptance of this Guaranty, and of any and all extensions of credit and indulgence hereunder, are expressly waived by the Guarantors, and each of them.

8. Any Obligee may, without any notice whatsoever to anyone, sell, assign or transfer all or any part of the Indebtedness Hereby Guaranteed, or grant participations in the Indebtedness Hereby Guaranteed, and in any and every such event, each and every immediate and successive assignee, transferee, holder of or participant in all or any part of the Indebtedness Hereby Guaranteed shall have the right to enforce this Guaranty by suit or otherwise, for the benefit of such assignee, transferee, holder or participant, as fully as if such assignee, transferee, holder or participant were herein by name specifically given such rights, powers and benefits.

9. This Guaranty, and each and every part hereof, shall be binding upon the Guarantors, and each of them, jointly and severally, and upon the heirs, administrators, legal representatives, successors and assigns of each of the Guarantors, and shall inure to the pro rata benefit of each and every future holder of the Note or any interest in the Indebtedness Hereby Guaranteed.

10. The delivery of the Note for value to any person shall, without more, constitute conclusive evidence of the acceptance hereof, and of the reliance hereon by each and every from time to time holder of the Note or any interest in the Indebtedness Hereby Guaranteed.

11. Guarantor acknowledges and agrees that Obligees is authorized to obtain a credit report (if applicable) on Guarantor at any time

12. As used herein, the masculine gender shall include the feminine, and the singular case shall include the plural and the plural the singular, wherever the same may be applicable.

13. The obligation and liability of each Guarantor shall for all purposes be a joint and several obligation and liability for all of the Indebtedness Hereby Guaranteed.

14. Notwithstanding any modification, discharge or extension of the Indebtedness Hereby Guaranteed or any amendment, modification, stay or cure of the Obligees' rights under the Note, Security Instrument or other Loan Document which may occur in any bankruptcy or reorganization case or proceeding affecting the Borrower, whether permanent or temporary, and whether or not assented to by the Obligees, the Guarantors hereby agree that they shall be obligated hereunder to pay the Indebtedness Hereby Guaranteed and discharge the other Obligations in accordance with the terms of the Note, Security Instrument and other Loan Documents and the terms of this Guaranty as in effect on the date hereof.

15. Each Guarantor understands and acknowledge that by virtue of this Guaranty such Guarantor has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding affecting the Borrower; and, as an example and not by way of limitation, a subsequent modification of the Note, Security Instrument or other Loan Documents in any reorganization case concerning the Borrower shall not affect the obligation of such Guarantors to pay the Note and all other Indebtedness Hereby Guaranteed and to perform and observe all obligations in accordance with the original terms thereof.

16. Each Guarantor hereby agrees that if at any time all or any part of any payment theretofore applied by any of the Obligees to any Indebtedness Hereby Guaranteed is rescinded or returned by any of the Obligees for any reason whatsoever (including, without limitation, the insolvency, bankruptcy, liquidation or reorganization of any party), the Indebtedness Hereby Guaranteed shall, for the purposes of this Guaranty, be deemed to have continued in existence to the extent of such payment, notwithstanding such application by any of the Obligees, and this Guaranty shall continue to be effective or be reinstated, as the case may be, as to the Indebtedness Hereby Guaranteed, all as though such application by any of the Obligees had not been made.

17. Guarantors each hereby acknowledge that the transactions relating to the Indebtedness Hereby Guaranteed, the Loan Documents and this Guaranty were negotiated in the State of North Carolina, County of Mecklenburg (the "Applicable County") and that this Guaranty shall be interpreted under and governed by the laws of the State of North Carolina.

18. The Guarantors each hereby acknowledge and agree that for all purposes hereof all actions or proceedings in any way, manner or respect arising out of or relating to this Guaranty and the transactions contemplated herein (herein generally called "Litigation"), shall be litigated only in courts having situs in the Applicable County or in Federal Court in the District in which the Applicable County is located. The Guarantors and each of them hereby consent and submit to the jurisdiction of any local or State court located within the Applicable County or any Federal Court in the District in which the Applicable County is located. The Guarantors and each of them hereby waive any right they or any of them may have to transfer or change the venue of any Litigation brought against Guarantors or any of them. The Guarantors and each of them hereby irrevocably waive the right to trial by jury with respect to any Litigation.

19. It shall be an Event of Default under this Guaranty and under the other Loan Documents in the event that: any Guarantor shall be dissolved, die or be adjudged legally incompetent and either (i) substitute collateral, or (ii) a replacement guarantor with sufficient creditworthiness to support the obligations, that is acceptable to Obligees in Obligees' sole discretion, is not found within sixty (60) days of said guarantor's dissolution, death or having been adjudged legally incompetent; or

20. This Guaranty may be executed in separate counterparts and such counterparts, taken together, shall constitute a fully executed and enforceable Guaranty.

21. If any one or more of the provisions or terms of this Guaranty shall be held invalid, pursuant to applicable state law or otherwise, then such provisions or terms shall be deemed severable from the remaining terms of this Guaranty and shall in no way affect the validity or enforceability of the other provisions of this Guaranty, and only the enforceable terms of this Guaranty shall survive.

21. Guarantor acknowledges, represents and warrants that:

- a. it understands the nature and structure of the transactions contemplated by this Guaranty and the other Loan Documents;
- b. it is familiar with the provisions of all of the documents and instruments relating to such transactions;
- c. it understands the risks inherent in such transactions, including the risk of loss of all or any part of the Property or of the assets of the Guarantor;
- d. it has had the opportunity to consult counsel;
- e. it has not relied on Lender or any Obligee for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Guaranty or any other Loan Document or otherwise relieved on Lender or any Obligee in any manner in connection with interpreting, entering into or otherwise in connection with this Guaranty, any other Loan Document or any of the matters contemplated hereby or thereby.

IN WITNESS WHEREOF, the Guarantors have signed and sealed this Guaranty as of the day and year first above written.

\_\_\_\_\_  
[Name]

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Social Security Number: \_\_\_\_\_

LIST ALL GUARANTORS AND THEIR ADDRESSES

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that \_\_\_\_\_ as GUARANTOR, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein and set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 201[]

\_\_\_\_\_  
Notary Public