

Form: Guaranty

Description: This is a sample form where several guarantors guarantee the performance and payment of the obligations of a debtor, for the benefit of a creditor. It is for a California based transaction.

Orientation: This is a pro-creditor oriented form.

Caution: A guaranty is very tricky legally and you must have your attorney determine what is appropriate in your situation and in your state

GUARANTY

This Guaranty ("Guaranty") is a personal continuing guarantee given by the undersigned guarantors ("Guarantors"), to _____ ("Creditor").

RECITALS

A. **WHEREAS** _____ ("Debtor") is simultaneously entering into a set of agreements on the date hereof (the "Agreements") with Creditor or its affiliates; and

B. **WHEREAS**, Guarantors for their own interests wish to induce Creditor to enter into the Agreements; and

C. **WHEREAS**, Creditor has advised Guarantors that Creditor will not enter into the Agreements unless, inter alia, Guarantors unconditionally guarantee pursuant hereto the performance of all of Debtor's obligations arising out of or in connection with the Agreements;

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

WITNESSETH:

1. **The Guaranty.** Guarantors acknowledge that they are aware of the terms and conditions of the Agreements, and do hereby irrevocably and unconditionally guaranty, without offset or deduction, jointly and severally, the due and punctual payment when due by Debtor of all moneys now or hereafter due Creditor pursuant to the Agreements (collectively, "Payment Obligations") and the prompt and proper performance by Debtor of all of its obligations to Creditor pursuant to the Agreements, other than those relating to the payment of money (collectively, "Non-Payment Obligations") (all such Payment Obligations and Non-Payment Obligations being hereinafter collectively referred to as the "Obligations"). Guarantors agree that in the event that Debtor fails to pay any Payment Obligation or perform any Non-Payment Obligation for any reason whatsoever (including, without limitation, the liquidation, insolvency, bankruptcy, reorganization, arrangement or readjustment of, or other similar proceedings affecting the status, existence, assets or obligations of, Debtor, or the disaffirmance with respect to Debtor of any of the Agreements, Guarantors will promptly pay or perform, as the case may be, such Obligations upon demand of Creditor. To the fullest extent permitted by law, the obligations of Guarantors hereunder shall not be affected by (a) any lack in the genuineness, validity, regularity or enforceability of any of the Debtor's obligations under the Agreements; (b) any direction of application by Debtor or any other party; (c) any other continuing or other guaranty or undertaking or the taking or releasing by Creditor of any security or any further security in connection with the Agreements; (d) any payment on or in reduction of any other guaranty or undertaking; or (e) any dissolution, termination, or increase, decrease or changes of personnel of Debtor.

2. **Waiver of Defenses.** Guarantors waive any right to require Creditor to (a) proceed against Debtor; (b) proceed against or exhaust any security held from Debtor; or (c) pursue any other remedy in Creditor's power whatsoever. Guarantors waive any defense based on or arising out of any defense of Debtor other than payment in full and performance of the Obligations, including without limitation any defense based on or arising out of the disability of Debtor, the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of Debtor other than payment in full and performance of the Obligations. Creditor may, at its election, foreclose on any security held by Creditor by one or more judicial sales, whether or not every aspect of any such sale is commercially reasonable, or exercise any other right or remedy Creditor may have against Debtor, or any security, without affecting or impairing in any way the liability of Guarantors under this Guaranty, except to the extent the Obligations have been paid or performed. Guarantors waive any defense arising out of such an election by Creditor, even if the election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of Guarantors against Debtor or any security. Guarantors waive all presentments, demands for performance, notices of protest, notices of dishonor and notices of acceptances of this Guaranty. Guarantors assume all responsibility for keeping informed of Debtor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment or nonperformance of the Obligations and the

nature, scope, and extent of the risks that Guarantors assume and incur under this Guaranty, and agree that Creditor shall have no duty to advise Guarantors of information known to it regarding those circumstances or risks.

3. **Guaranty Absolute and Continuing.** To the fullest extent permitted by law, Guarantors agree that their obligations hereunder are absolute and shall not be affected by (a) any failure of Creditor, inadvertent or deliberate, to protect, secure, insure, perfect or realize upon, or any negligence by Creditor with respect to, any collateral, security interest or lien which may secure any Obligations or the obligations of Guarantors hereunder, (b) any amendment, waiver, renewal, compromise, extension, acceleration or other modification of the terms of the Agreements or (c) any other circumstances which might otherwise constitute a legal or equitable defense to or discharge of the obligation of a surety or a guarantor. This is a continuing guaranty of payment with respect to the Payment Obligations and not of collection. A separate action or actions may be brought and prosecuted against Guarantors whether or not action is brought against Debtor or whether or not Debtor be joined in any such action or actions. Guarantors waive, to the fullest extent permitted by law, the benefit of any statute of limitations affecting their liability under this Guaranty. Any payment by Debtor or other circumstance that operates to toll any statute of limitations as to Debtor shall also operate to toll the statute of limitations as to Guarantors. If any Guarantor is a married person, he or she agrees that recourse may be had against his separate property for his obligations under the Guaranty.

4. **Enforceability of Guaranty.** In the event that Creditor shall be stayed or otherwise precluded by any law or rule, or any order of any court, from proceeding against Debtor with respect to any Payment Obligations, Guarantors hereby agree, to the fullest extent permitted by law, that for purposes of this Guaranty Creditor may nevertheless cause such Payment Obligations to become immediately due and payable by Guarantors by a notice to such effect; and that Guarantors shall thereupon pay all such Payment Obligations in full or, as Creditor may direct, purchase all such Payment Obligations owed to Creditor (without recourse) by paying the full amount thereof to Creditor in cash.

5. **Subsequent Recovery from Creditor.** If any claim is ever made upon Creditor for repayment or recovery of any amount or amounts received by it in payment or on account of any of the Obligations, Creditor shall promptly notify Guarantors and extend to Guarantors reasonable opportunity to defend the same at the expense of Guarantors, and if Creditor repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body or (b) any settlement or compromise of any such claim effected in good faith by Creditor with any such claimant, Guarantors agree that any such judgment, decree, order, settlement or compromise shall be binding upon Guarantors, and Guarantors shall be and remain liable to Creditor hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by Creditor.

6. **Subordination.** Any indebtedness of Debtor now or hereafter held by Guarantors is hereby subordinated to the indebtedness of Debtor to Creditor, and all such indebtedness of Debtor to Guarantors, if Creditor so requests, shall be collected, enforced, and received by Guarantors as trustee for Creditor and be paid over to Creditor on account of the indebtedness of Debtor to Creditor, without affecting or impairing in any manner the liability of Guarantors under the other provisions of this Guaranty.

7. **Waiver; Modification.** No delay on the part of Creditor in exercising any of its options, powers, or rights, and no partial or single exercise thereof, shall constitute a waiver thereof. No waiver of any of its rights hereunder, and no modification or amendment of this Guaranty, shall be deemed to be made by Creditor unless the same shall be in writing, duly signed on behalf of Creditor and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the right of Creditor or the obligations of Guarantors in any other respect at any other time.

8. **Governing Law.** This Guaranty and the rights and obligations of Creditor and of Guarantors hereunder shall be governed and construed in accordance with the laws of the State of _____, without regard to conflicts of law principles, and shall be binding upon Guarantors and its successors and assigns, and this Guaranty shall inure to the benefit of and be enforceable by Creditor and its successors and assigns.

9. **Assignment by Creditor.** Guarantors agree that Creditor may assign without notice all or a part of its rights hereunder and Guarantors agree, in such case, that any such assignee shall have the rights of Creditor hereunder and further agrees to perform any such assigned obligations for the benefit of any such assignee.

10. **Invalidity and Construction.** If any provision of this Guaranty contravenes or is held invalid under the laws of any jurisdiction, this Guaranty shall be construed as though it did not contain that provision, and the rights and liabilities of the parties to this Guaranty shall be construed and enforced accordingly. This Guaranty shall be construed as to its fair meaning and not strictly for or against Creditor or Guarantor.

11. **Notices, Demands.** Any notice, demand or request hereunder shall be in writing and shall be deemed to have been validly given or made upon delivery, if personally delivered, or on the date mailed, if mailed postage prepaid, by first class mail, addressed to the party to be notified at the address set forth after its or his or her name on the signature page hereof or to such other address as any party may hereafter designate for itself or himself or herself by written notice to the other parties in the manner herein prescribed.

12. **Joint and Several Obligations.** The obligations hereunder are joint and several, and independent of the obligations of Debtor, and a separate action or actions may be brought and prosecuted against any or all of the Guarantors whether action is brought against Debtor or whether Debtor be joined in any such action or actions; and Guarantors waive the benefit of any statute of limitations affecting his or her liability hereunder or the enforcement thereof.

13. **Waiver of Subrogation and Contribution Rights.** Guarantors hereby irrevocably waive any rights (including, without limitation, any rights arising under California Civil Code " 2847, 2848 and 2849) which they may acquire by way of subrogation under this Guaranty or any of the Agreements, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from Debtor, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such subrogation rights. Guarantors hereby irrevocably agree, to the fullest extent permitted by law, that they will not exercise any rights which they may acquire by way of contribution, reimbursement, indemnification or exoneration under this Guaranty or any of the Agreements, by any payment made hereunder or otherwise, all of such rights being expressly waived herein, including without limitation, the right to take or receive from any other Guarantor, directly or indirectly, in cash or other property or by set off or in any other manner, payment or security on account of such contribution rights.

14. **Attorneys' Fees.** Guarantors agree to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Creditor in the enforcement of this Guaranty.

IN WITNESS WHEREOF, Guarantors have caused this Guaranty to be duly executed and delivered to Creditor as of the day and year written below.

Dated: _____

Address: _____

Address: _____

Address: _____
