**GUARANTEE**

**THIS GUARANTEE** is made as of the ⚫ day of ⚫, ⚫.

**BY:**

⚫

([collectively, on a joint and several basis,] the ‘Guarantor’)

**IN FAVOUR OF:**

EQUITABLE BANK

(the ‘Lender’)

**WHEREAS** the Lender issued a Commitment in favour of ⚫ (collectively, the ‘**Borrower**’) dated ⚫ respecting the provision of mortgage financing for the property municipally known as ⚫ (the ‘**Property**’);

**AND WHEREAS** the said Commitment, as it may be amended, supplemented, restated or replaced from time to time, is hereinafter called the ‘**Commitment**’;

**AND WHEREAS** pursuant to the Commitment, the Borrower has given a Mortgage charge in favour of the Lender in the principal sum of ⚫(the ‘**Loan**’) respecting the Property;

**AND WHEREAS** the Mortgage, the Standard Charge Terms and all security documents including all certificates, declarations, undertakings, documents and writings provided by the Borrower relating to the Loan, as they may be amended, supplemented, restated or replaced from time to time, are hereinafter collectively referred to as the ‘**Loan Documents**’;

**AND WHEREAS** it is a condition of the Lender making the Loan pursuant to the Commitment that the Guarantor guarantee to the Lender, and indemnify the Lender for, all of the debts, liabilities and obligations of the Borrower relating to the Loan, under the Commitment and under the Loan Documents to which the Borrower is a party or by which it may be bound; and

**AND WHEREAS**, for good and valuable consideration, the Guarantor has agreed to guarantee to the Lender, and indemnify the Lender for, the due payment of the Loan and the performance of the liabilities and obligations of the Borrower to the Lender hereunder, pursuant to the Commitment and the Loan Documents;

All capitalized but undefined words or terms used herein shall have the meanings ascribed thereto in the Standard Charge Terms.

**NOW THEREFORE THIS GUARANTEE WITNESSETH THAT**, in consideration of the Lender making the Loan to the Borrower and for all other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Guarantor, the Guarantor does hereby covenant and agree with the Lender as follows:

1. **GUARANTEE**
   1. The Guarantor hereby unconditionally and irrevocably guarantees to and in favour of the Lender as principal debtor and not as surety, the due and punctual payment of the Loan and all present and future debts, liabilities and obligations in respect of the Loan, now or at any time and from time to time hereafter due or owing by the Borrower to the Lender under or pursuant to the Commitment and/or the Loan Documents as and when same fall due, whether direct or indirect, absolute or contingent, matured or not, including, without limitation, all damages, costs, legal costs as between a solicitor and his own client, charges and expenses which may become due or payable to the Lender pursuant to any of the Loan Documents or enforcement thereof, and that the Guarantor will well and truly observe and perform all of the covenants, terms and conditions of the Loan Documents to be observed and performed by the Borrower (all of which promises to pay, observe and perform being hereinafter collectively referred to as the ‘**Liabilities**’).
   2. The Guarantor’s guarantee hereunder shall be on a joint and several basis with the Borrower and with any other guarantor of the Liabilities, irrespective of whether such other guarantor (if any) is not named herein.
   3. This Guarantee shall be an absolute, continuing and irrevocable guarantee by the Guarantor of all of the Liabilities and shall apply to and secure any ultimate balance due or remaining due to the Lender and shall be binding as a continuing obligation of the Guarantor as well after as before default and after as before maturity of the Mortgage, until the Liabilities are fully paid and satisfied, unless provided otherwise herein. If any of the Liabilities are not recoverable from the Guarantor as guarantor, such Liabilities shall be recoverable from the Guarantor as an indemnifier in respect thereof.
   4. The Guarantor is and shall continue to be liable as a principal debtor, notwithstanding the bankruptcy of the Borrower or any act on the part of the Borrower in connection with this Guarantee, any agreement between the Lender and the Borrower, or any security held by the Lender whereby the Guarantor would otherwise be released or exonerated from its obligations under this Guarantee including, without limitation, the granting of time or other indulgences to the Borrower, the giving up, discharging, releasing, abandoning, modification, variation, exchange, renewal, assigning, or abstinence from perfecting or taking advantage of any security given or to be given to the Lender by the Borrower or the Guarantor, in whole or in part, the discharge of any part or parts of or acceptance of any composition or arrangement or realization upon any security given or to be given to the Lender by the Borrower or the Guarantor, or any neglect or omission with respect to any security given to the Lender by the Borrower or the Guarantor. No release of the Borrower, no change or changes in the name of the Borrower, or any other thing whatsoever whereby the Guarantor as surety only would or might have been released shall in any way modify, alter, vary or in any way prejudice the Lender or affect, in any way limit, or lessen the liability of the Guarantor in any way under this covenant, which shall continue and be binding on the Guarantor, and as well after as before maturity of the Mortgage and both before and after default and judgment, until the Liabilities are fully paid and satisfied.
   5. The Guarantor shall continue to remain liable hereunder and shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by the Lender in connection with any duties or liabilities of the Borrower to the Lender, or any security therefor including any loss of or in respect of any security received by the Lender from the Borrower or any other person. Without limiting the generality of the foregoing and without releasing, discharging, limiting or otherwise affecting in whole or in part the Guarantor's liability hereunder, without obtaining the consent of or giving notice to the Guarantor, the Lender may:
2. Grant extension of time or extensions of time from time to time which may be given by the Lender to the Borrower for payment, observance, performance or fulfilment of any liabilities, indebtedness, agreements or obligations hereby guaranteed and the Guarantor hereby covenants and agrees with the Lender that payments shall be made in accordance with such extension or extensions of time and that if payments are not made in accordance with such extension or extensions of time the Guarantor shall make or cause to be made the payments in accordance with such extension of time;
3. Accept compromises from the Borrower;
4. Realize on any securities now or hereafter held by the Lender;
5. Do or omit to do any other act, matter or thing whatsoever with relation to the Liabilities hereby guaranteed or any security or securities now or hereafter held in respect thereof or any part of same; or
6. Otherwise deal with all other persons and securities as the Lender may see fit.
7. **COVENANTS**
   1. The Guarantor agrees that:
   2. The covenants of the Guarantor herein shall continue for the full term of the Mortgage including any renewal thereof, unless a release in writing has been authorized by the Lender, and shall be binding upon the heirs, estate trustees, successors and permitted assigns of the Guarantor until such time as the Liabilities owing by the Borrower to the Lender have been paid in full and the liabilities secured by the Loan Documents have been discharged;
   3. It is the intention of the parties that if for any reason the Borrower has no legal existence and is or becomes under no legal obligation to discharge the monies secured by the Loan Documents or if any monies owing by the Borrower to the Lender become irrecoverable from the Borrower by operation of law or for any reason whatsoever, including the bankruptcy, winding-up, liquidation, dissolution or insolvency of the Borrower, this covenant and the liabilities, covenants, agreements and obligations of the Guarantor contained herein shall nevertheless be binding upon the Guarantor as principal debtor until such time as the Indebtedness owing by the Borrower to the Lender have been paid in full and the liabilities secured by the Loan Documents have been discharged;
   4. The Guarantor shall not raise in any proceedings concerning the enforcement of the Loan Documents or this Guarantee, any defences relating to any alleged invalidity or unenforceability of any of the Loan Documents, or any of the provisions thereof. This provision may be pleaded by the Lender as an estoppel in any such proceedings;
   5. In any claim by the Lender against the Guarantor, the Guarantor may not assert any set-off, rescission or counterclaim that the Guarantor may have against the Lender. In particular, any loss of or in respect of any securities received by the Lender from the Borrower or any other person, and the failure to perfect any mortgage, prior claim or security interest of any nature whatsoever, whether occasioned through the fault or negligence of the Lender or otherwise, shall not discharge, limit or lessen the liability of the Guarantor under this Guarantee;
   6. The Guarantor shall, at its sole cost and expense, at any time and from time to time, prepare or cause to be prepared, and provide to the Lender upon the Lender's request: (a) such financial statements and reports concerning the Guarantor for such periods of time as the Lender may designate; (b) any other information concerning the Guarantor's business, financial condition or affairs as the Lender may request; and (c) copies of any and all tax returns, Notices of Assessment and reports of or relating to the Guarantor as the Lender may from time to time request. The Guarantor hereby intentionally and knowingly waives any and all rights and privileges it may have not to divulge or deliver said tax returns, reports and other information that are requested by the Lender hereunder or in any litigation in which the Lender may be involved relating directly or indirectly to the Borrower or to the Guarantor. The Guarantor further agrees immediately to give written notice to the Lender of any material adverse change in a Guarantor's financial condition and of any condition or event that constitutes an event of default under this Guarantee; and
   7. This Guarantee shall be in addition to and not in substitution for any other guarantees or other securities which the Lender may now or hereafter hold in respect of the monies secured by the Loan Documents and the Lender shall be under no obligation to marshall in favour of the Guarantor any other covenants or other securities or any monies or other assets which the Lender may be entitled to receive or may have a claim upon; and no loss of or in respect of or unenforceability of any other covenants or other securities which the Lender may now or hereafter hold in respect of the monies secured by the Loan Documents whether occasioned by the fault of the Lender or otherwise shall in any way limit or lessen the Guarantor’s liability.
8. **POSTPONEMENT**
   1. All indebtedness and liability, present and future, of the Borrower to the Guarantor are hereby assigned to the Lender and postponed to the repayment of the Indebtedness secured by the Loan Documents and all monies received by the Guarantor in respect thereof shall be received in trust for the Lender, the whole without limiting or lessening the liabilities of the Guarantor under this Guarantee and this assignment and postponement is independent of the said Guarantee and shall remain in full effect until repayment in full to the Lender of the Indebtedness secured by the Loan Documents. Notwithstanding that the Liabilities of the Guarantor under this Guarantee may have been discharged or terminated, the Guarantor acknowledges the assignment to the Lender as set forth herein shall not impose upon the Lender any obligation to do anything to realize on the assigned debts and claims or to ensure that those debts or claims do not become statute barred by the operation of law relating to limitation of actions or otherwise.
   2. The Guarantor, to the extent not expressly prohibited by applicable law, waives any right to require the Lender to: (a) proceed against any person or property; (b) give notice of the terms, time and place of any public or private sale of personal property security held from the Borrower or any other person, or otherwise comply with the Personal Property Security Act of the Province of ⚫, as the same may be amended, revised or replaced from time to time; (c) pursue any other remedy in the Lender's power, and (d) deliver to the Guarantor a copy of any financing statement or financing change statement registered by the Lender in respect of the Guarantor.
   3. The Guarantor waives notice of acceptance of this Guarantee and presentment, demand, protest, notice of protest, dishonour, notice of dishonour, notice of default, notice of intent to accelerate or demand payment or notice of acceleration of any of the Liabilities, any and all other notices to which the Guarantor might otherwise be entitled, and diligence in collecting any of the Liabilities, and all rights of a guarantor under applicable law, and agrees that the Lender may, once or any number of times, modify the terms of any Liabilities, compromise, extend, increase, accelerate, renew or forbear to enforce payment of any or all of the Liabilities, or permit the Borrower to incur additional Liabilities, all without notice to the Guarantor and without affecting in any manner the unconditional obligation of the Guarantor under this Guarantee.
   4. The Guarantor unconditionally and irrevocably waives each and every defence and set-off of any nature which, under principles of guarantee or otherwise, would operate to impair or diminish in any way the obligations of the Guarantor under this Guarantee, and acknowledges that each such waiver is by this reference incorporated into each security agreement, collateral assignment, pledge and/or other document from the Guarantor now or later securing this Guarantee and/or the Liabilities, and acknowledges that as of the date of this Guarantee no such defence or set-off exists.
   5. The Guarantor waives any and all rights (whether by subrogation, indemnity, reimbursement, or otherwise) to recover from the Borrower any amounts paid by the Guarantor pursuant to this Guarantee.
9. **DEMAND AND PAYMENT**
   1. The Lender shall not be obliged to make any demand upon, or take any proceedings, or action against the Borrower or any other person before pursuing its rights against the Guarantor pursuant hereto. In the event that Lender in its absolute and subjective discretion makes demand upon the Guarantor, the Guarantor shall be held and be bound to the Lender directly as principal debtor in respect of the Liabilities and the payment of the amounts hereby guaranteed.
   2. The Guarantor shall make payments to the Lender of the amount of the liability of the Guarantor hereunder forthwith after demand therefor is made in writing, including without limitation all out-of-pocket expenses (including the fees and expenses of the Lender's counsel) in any way relating to the enforcement or protection of the rights of the Lender or any of them hereunder. The liability of the Guarantor shall bear interest from the date of such demand at the interest rate set out in the Commitment and the Loan Documents (the ‘**Interest Rate**’). Such demand shall be deemed to have been effectually made when an envelope containing it addressed to the Guarantor at the last address of the Guarantor known to the Lender is sent by registered mail and the liability of the Guarantor shall bear interest at the Interest Rate.
   3. Any account settled or stated by or between the Lender and the Borrower or admitted by or on behalf of the Borrower may be adduced by the Lender and shall in that case be accepted by the Guarantor as conclusive evidence that the balance or amount thereof thereby appearing is due by the Borrower to the Lender.
   4. The Lender shall not be bound to exhaust its recourses against the Borrower before requiring payment from the Guarantor and the Lender may enforce all available remedies and realize upon securities held or any part thereof in the order that it may determine.
   5. Should the Lender receive from the Guarantor a payment or payments in full or on account of its liability under this Guarantee, the Guarantor shall not be entitled to claim repayment against the Borrower or the Borrower's estate until the Lender's claims against the Borrower have been paid in full and in case of the liquidation, winding up or bankruptcy of the Borrower (whether voluntary or compulsory) or if the Borrower makes a bulk sale of any of its assets or any composition with creditors or scheme of arrangements, the Lender shall have the right to rank for its full claim and receive all dividends or other payments in respect thereof until its claim has been paid in full, and the Guarantor shall continue to be liable up to the amount guaranteed (less any payments made by the Guarantor) for any balance which may be owing to the Lender of any of its securities and/or the retention thereof by the Lender, such valuation and/or retention shall not, as between the Lender and the Guarantor, be considered as a purchase of such security or as payment or satisfaction or reduction of the Borrower's liability to the Lender or any part thereof.
10. **INDEMNITY**

The Guarantor hereby undertakes and agrees to indemnify and hold harmless the Lender from and against any and all liability, loss, harm, damage or expense, including legal fees on a solicitor and client basis, which it may suffer, incur or sustain by reason of, in connection with or resulting from this Guarantee, the default of the Borrower under the Commitment and/or the Loan Documents or with respect to any of the Liabilities owing from the Borrower to the Lender.

1. **REPRESENTATIONS AND WARRANTIES**
   1. The Guarantor hereby represents and warrants that: (a) it is in the Guarantor's direct interest to assist the Borrower in procuring credit, because the Guarantor is an affiliate of the Borrower, furnishes goods or services to the Borrower, purchases or acquires goods or services from the Borrower, and/or otherwise has a direct or indirect corporate or business relationship with the Borrower; (b) this Guarantee has been duly and validly authorized, executed and delivered and constitutes the binding obligation of the Guarantor, enforceable in accordance with its terms; (c) the Guarantor has the full power and authority to enter into this Guarantee, to carry out its obligations hereunder and to consummate the transactions contemplated hereby; and (d) the execution and delivery of this Guarantee does not violate or constitute a default under any order, judgment, decree, instrument or agreement to which the Guarantor is a party or by which it or its property are affected or bound.
   2. No action or proceeding brought or instituted under this Guarantee and no recovery in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this Guarantee by reason of any further default or defaults hereunder and/or in payment of the debts and liabilities of the Borrower referred to herein.
   3. This Guarantee is in addition to and is supplemental to security held or which may hereafter be held by the Lender.
2. **GENERAL**
3. All recitals contained herein are true and accurate and form an integral part of this Guarantee.
4. The Guarantor acknowledges receipt of this Guarantee, the Commitment, the Mortgage, the Standard Charge Terms and all other Loan Documents.
5. There are no representations, warranties, collateral agreements, terms, conditions or undertakings with respect to this instrument or affecting the liability of the Guarantor hereunder, other than as contained herein.
6. No modification of this Guarantee shall be effective unless the same be in writing and signed by the Guarantor and the Lender. Any change or changes in the name of the Borrower shall not affect, in any way limit, or lessen the Liabilities of the Guarantor hereunder.
7. This Guarantee constitutes the entire agreement between the Guarantor and the Lender with respect to the subject matter hereof and the Lender shall not be bound by any representations or promises made by the Borrower or any other person to the Guarantor.
8. This Guarantee, together with all rights, entitlements, duties and obligations arising from the same, shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, estate trustees, legal personal representatives, successors and assigns.
9. The Guarantor shall not assign or novate any of its rights or obligations hereunder without the prior written consent of the Lender which may be arbitrarily withheld.
10. **LAW AND JURISDICTION**

This Guarantee shall be read and construed with all changes of gender and number of the party or parties referred to in each case as required by the context. This Guarantee shall be governed by and interpreted in accordance with the laws of the Province of ⚫ and the federal laws of Canada applicable therein and the parties hereto hereby attorn to the jurisdiction of the Province of ⚫.

1. **COUNTERPARTS AND ELECTRONIC TRANSMISSION**

This Guarantee may be executed in any number of separate counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. A signed copy of this Guarantee may be delivered by e-mail or other means of electronic transmission and shall be binding upon the party delivering same and be deemed to have the same legal effect as delivery of an original signed copy.

**IN WITNESS WHEREOF** this Guarantee has been signed, sealed, and delivered on the date set out above.

|  |  |  |
| --- | --- | --- |
| SIGNED & DELIVERED In the presence of: |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: ⚫ |
| Witness: ⚫ |  |

**OR**

**⚫**

Per: ⚫

Per: ⚫

I/We have the authority to bind the corporation.