

## **APPENDIX D**

### **Lease Guaranty**

**Dated as of:** \_\_\_\_\_

The undersigned, Guarantor, in consideration of and as an inducement for the execution and delivery of a certain Lease Agreement by \_\_\_\_\_, a New Jersey \_\_\_\_\_ (the "Lessor"), made between the Lessor and \_\_\_\_\_, a New Jersey (the "Lessee"), guarantees to Lessor: (i) the full and prompt payment of all base rent, additional rent and other sums now or hereafter due under or with respect to a certain Lease Agreement dated \_\_\_\_\_ (the "Lease"); (ii) the full and prompt performance and observance by the Lessee of all the lease provisions to be performed and observed under the Lease; (iii) the full and prompt payment of all damages that may arise in consequence of any default or breach of the Lease, and/or enforcement thereof, including, without limitation, all reasonable counsel and expert fees and expenses incurred by the Lessor; and (iv) the full and prompt payment of all damages that may arise in consequence of any default or breach of this Guaranty, and/or the enforcement thereof, including, without limitation, all reasonable counsel and expert fees and expenses incurred by the Lessor.

This Guaranty is an absolute, continuing and unconditional guaranty of punctual payment and performance, and Guarantor waives notice of acceptance of the Guaranty by the Lessor.

This Guaranty shall be enforceable against Guarantor without the need of bringing any suit or other action against the Lessee, or any other guarantor, and without presentment, demand, protest, notice of non-payment, non-performance or non-observance, or of any other notice to which Guarantor might otherwise be entitled, all of which are waived by Guarantor.

The validity of this Guaranty and the obligation of Guarantor shall not be terminated, affected or impaired by reason of Lessor's assertion or failure to assert against the Lessee or any other guarantor, any of the rights or remedies reserved to the Lessor by the Lease provisions or any other guaranty.

The liability of Guarantor shall not be affected or diminished by reason of any assignment, renewal, or extension of the Lease; or any amendment, modification, waiver or change in any of the terms, conditions or covenants of the Lease; or any extension of time that may be granted by the Lessor; or any dealings, transactions, matters or things occurring between the Lessor and the Lessee, including without limitation, an assignment of the Lease by the Lessor or the Lessee; or whether or not notice of any of the foregoing is given to Guarantor.

The liability of Guarantor shall in no way be affected by (1) the release or discharge of the Lessee or any other guarantor in any creditors' receivership, bankruptcy or other proceedings; (2) the impairment, limitation or modification of the liability of the Lessee or any other guarantor or the estate of the Lessee or any other guarantor in bankruptcy, or of any remedy for the enforcement of the Lessee's liability under the Lease or any other guarantor's liability under any guaranty resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute, or from the decision in any court; (3) the rejection or disaffirmance of the Lease or any other guaranty

in any such proceedings; (4) any disability or other defense of the Lessee or any other guarantor; or (5) the cessation from any cause of the liability of the Lessee or any other guarantor.

This Guaranty shall not be affected by, and Guarantor hereby expressly waives the need or requirement for notice of or consent to, any lease amendment, extension, renewal, space change (whether by addition, relocation, or subtraction), assignment, sublease and/or holdover.

The Lessor's rights and remedies under this Guaranty are intended to be distinct, separate and cumulative, and no right or remedy is intended to be an exclusion or a waiver of any of the others. The Lessor and Guarantor waive trial by jury in any action or proceeding based on this Guaranty. This Guaranty shall be governed by and construed in accordance with the laws of the State of New Jersey and the parties submit to the jurisdiction of the courts of the State of New Jersey. The obligation of Guarantor, if there be more than one, shall be joint and several under this Guaranty. If Guarantor is a foreign entity, it must, on or before the date of this Guaranty, qualify with the Department of the Treasury of the State of New Jersey to do business in the State of New Jersey and promptly submit written proof of the qualification to Lessor.

This Guaranty shall be binding upon Guarantor and the heirs, executors, administrators, personal and legal representatives, successors and assigns of Guarantor, and shall inure to the benefit of the Lessor and the Lessor's executors, administrators, heirs, personal and legal representatives, successors and assigns.

Guarantor shall not exercise any right which Guarantor may have acquired by way of subrogation under this Guaranty or a contribution by any payment made under this Guaranty, or otherwise, unless and until all of the Lessee's obligations under the Lease have been paid and performed in full, and if any payment is made to Guarantor on an account of such subrogation or contribution rights at any time when all of such obligations have not been paid and performed in full, each and every amount so paid shall promptly be paid to the Lessor, to be credited and applied against those obligations, whether matured or unmatured, in accordance with the terms of those provisions of the Lease which are applicable.

If any action or proceeding is commenced against the Lessor in connection with this Guaranty, Guarantor shall pay all reasonable counsel and expert fees and expenses incurred by the Lessor.

If any claim is ever made upon the Lessor for repayment or recovery of any amount received in payment or on account of the Lease or any other guaranty, and the Lessor repays or becomes obligated to repay all or any part of the amount by reason of (i) a judgment, decree or order of any court or administrative body having jurisdiction over the Lessor or any of its property, or (ii) any settlement or compromise of any claim effected by the Lessor, then and in such event, Guarantor shall be bound by such judgment, decree, order, settlement or compromise, notwithstanding payment of all sums due to the Lessor pursuant to the Lease, this Guaranty or any other guaranty, or all of them, and Guarantor shall be and remain liable to the Lessor for the amount so repaid, recovered or otherwise due from the Lessor as provided above, to the same extent as if such amount had never been received by the Lessor. Without limitation, if payment is accepted by the Lessor from the Lessee or any other person or entity, and such payment is set aside as a voidable preference or for any other reason, this Guaranty shall continue in full force and effect, entitling the Lessor to proceed as if the payment had

not been made. The provisions of this paragraph shall survive the payment of all sums due to the Lessor and the payment of all obligations of Guarantor under this Guaranty.

The rights and remedies of the Lessor under this Guaranty are intended to be distinct, separate and cumulative, and no right or remedy or the exercise thereof is intended to be an exclusion or a waiver of any of the others.

If this Guaranty is executed by more than one party, the pronouns and relative words appearing in the singular shall have the same effect as if used in the plural where required by the context.

Each of the individuals signing this Guaranty on behalf of an entity, by signing this Guaranty, individually represents and warrants that it has the authority to sign this Guaranty and to bind the party on behalf of whom such individual is signing.

Signed and sealed by Guarantor.

Witness:

\_\_\_\_\_ (L.S.)  
\_\_\_\_\_, Individually [if applicable]  
Address: \_\_\_\_\_  
\_\_\_\_\_

Social Security/Federal Business ID No. \_\_\_\_\_