



**State of California
Department of Industrial Relations
OFFICE OF SELF-INSURANCE PLANS**

Certificate Number: _____

In the Matter of the Certificate of

Employer,

**GUARANTY OF
WORKERS' COMPENSATION LIABILITIES**

WHEREAS, _____ (hereinafter called the Undersigned or Guarantor), has good and sufficient reason for executing this Guaranty of Workers' Compensation Liabilities ("Agreement"); and

WHEREAS, _____ (hereinafter called Self-Insurer), is, or has made application to be, a self-insurer pursuant to Sections 3700 through 3705 inclusive of the Labor Code of California;

NOW, THEREFORE, It is understood and agreed that:

1. In consideration of the Director of Industrial Relations of the State of California issuing a Certificate of Consent to Self-Insure to said Self-Insurer, the Undersigned agrees to guarantee to pay, or otherwise discharge promptly, all the liabilities and obligations which said Self-Insurer may incur as a self-insurer of its California workers' compensation liabilities (the "Obligations").
2. This Agreement shall cover and extend to all potential liability for workers' compensation benefits as required by law of said Self-Insurer; as a self-insurer of its California workers' compensation liabilities arising under Self-Insurer's Certificate of Consent to Self-Insure regardless of whether those liabilities arose before or after execution of this Agreement.
3. This Agreement shall not cover or extend to any workers' compensation liabilities of said Self-Insurer which are expressly insured by a carrier duly authorized to write California workers' compensation insurance.
4. This Agreement shall remain in full force and effect unless properly and timely terminated in the manner hereinafter provided.
5. This Agreement may be terminated only upon the Undersigned's receipt of the express and mutual written consent of the Director of the Department of Industrial Relations ("DIR") and the Self-Insurers' Security Fund ("SISF"). In this event, and only in this event, the liability of the Undersigned, shall, upon receipt of such express written consent, cease and determine, except as to such liability of the Self-Insurer on account of any injury suffered by any of its employees prior to receipt of such express written consent; it being expressly understood and agreed that the Undersigned shall be liable for default of said Self-Insurer in fully discharging all existing and potential liability of said Self-Insurer as a self-insurer as of the date of said termination.

6. A change in the proprietorship or the sale of said Self-Insurer does not terminate this Agreement.

7. In the event said Self-Insurer shall fail to pay compensation, as compensation is defined in Section 3207, Labor Code of California, when due, the Undersigned will pay the same, and the payment may be enforced against the Undersigned to the same extent as if said payment was the liability of it.

8. The Undersigned is held and firmly bound for the payment of all legal costs incurred by the State of California in any actions taken to enforce this Agreement.

9. If the Undersigned has not filed with the California Secretary of State to the extent required to entitle it to transact intrastate business in California and/or if the Undersigned is a foreign entity (an entity organized and existing under the laws of a country outside the United States of America) it hereby agrees to become subject to the jurisdiction of the Department of Industrial Relations, the Division of Workers' Compensation, all other administrative agencies, and become controlled by California law including all regulations promulgated by the Director of Industrial Relations for the administration of self-insurance for the purpose of enforcing the liabilities and obligations, and the resolution of any dispute arising from this Agreement.

10. If the Undersigned has not filed with the California Secretary of State to the extent required to entitle it to transact intrastate business in California it hereby agrees that service of process may be effected on the Undersigned by sending notice to _____

by registered airmail, return-receipt requested. Pursuant to California Code of Civil Procedure Section 415.40, service of notice by this form of mail will be deemed complete on the tenth day after such mailing.

11. **Continuing Guaranty.** This is a continuing guaranty of the Obligations and is a guaranty of payment and performance of the Obligations and not of collection only.

12. **Nature of Guaranty.** The liability of Guarantor hereunder is independent of the obligations of Self-Insurer and a separate action or separate actions may be brought and prosecuted against Guarantor whether or not any action is brought or prosecuted against Self-Insurer or any other person, including any other guarantor of the Obligations, or whether Self-Insurer or any other person is joined in any such action or actions. The liability of Guarantor hereunder is independent of and not in consideration of or contingent upon the liability of any other person under this or any similar instrument and the release of, or cancellation by, any signer of this or a similar instrument shall not act to release or otherwise affect the liability of Guarantor hereunder. Guarantor waives the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof to the fullest extent permitted by law.

13. **Waivers.** Guarantor waives the right to require DIR or SISF to proceed against or exhaust any security held from Self-Insurer or any other person, or to pursue any other remedy in DIR's or SISF's power whatsoever and Guarantor waives the right to have the property of Self-Insurer first applied to the discharge of the Obligations. DIR or SISF may at its election exercise any right or remedy it may have against Self-Insurer or any security now or hereafter held by DIR or SISF, including, without limitation, the right to foreclose upon any such security by judicial or nonjudicial sale, without affecting or impairing in any way the liability of Guarantor hereunder, except to the extent the Obligations have been paid. ***Guarantor understands that the exercise by DIR or SISF of certain rights and remedies (including without limitation, non-judicial foreclosure against any real property security for the Obligations) may affect or eliminate Guarantor's right of subrogation, contribution or indemnification against Self-Insurer and that Guarantor may therefore succeed to a partially***

or totally nonreimbursable liability hereunder. Nevertheless, Guarantor hereby authorizes and empowers DIR or SISF to exercise in its sole discretion any rights and remedies or any combination of rights and remedies that may then be available, since it is the intent and purpose of Guarantor that the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances. Guarantor waives (i) any defense arising by reason of any disability or other defense of Self-Insurer or by reason of the cessation from any cause whatsoever of the liability, either in whole or in part, of Self-Insurer to DIR or SISF for the Obligations; (ii) any defense based on the discharge of Self-Insurer by operation of law, notwithstanding any intervention or omission by DIR or SISF and notwithstanding the provisions of section 2825 of the California Civil Code; (iii) all rights and benefits under section 726 of the California Code of Civil Procedure; and (iv) any defense based on or arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of Guarantor against Self-Insurer or any such security, whether resulting from such election by DIR or SISF or otherwise.

To the fullest extent permitted by law, Guarantor waives all rights and benefits under (i) section 2822 of the California Civil Code purporting to reduce the obligation of a surety upon the acceptance by a creditor of anything in partial satisfaction of an obligation; (ii) section 2819 of the California Civil Code purporting to exonerate a surety if by any act of the creditor, without the consent of the surety, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, are in any way impaired or suspended (it being expressly understood and agreed that DIR or SISF may compromise, settle, alter, extend, waive, amend, suspend or surrender any Obligation or any right or remedy with respect thereto without notice to or consent by Guarantor and without affecting Guarantor's obligations hereunder); (iii) section 2845 of the California Civil Code purporting to exonerate the surety to the extent that the creditor does not proceed against the principal, or pursue any other remedy in the creditor's power which the surety cannot pursue, and which would lighten the surety's burden; (iv) under section 2809 of the California Civil Code purporting to reduce a guarantor's obligations in proportion to the principal obligation; (v) under sections 2810, 2899 and 3433 of the California Civil Code; (vi) under section 580a of the California Code of Civil Procedure; (vii) under section 580b of the California Code of Civil Procedure stating that no deficiency may be recovered on a real property purchase money obligation; and (viii) under section 580d of the California Code of Civil Procedure stating that no deficiency may be recovered on a note secured by a deed of trust on real property in case such real property is sold under the power of sale contained in such deed of trust. Guarantor fully understands that, without the waivers set forth in this Paragraph 13, Guarantor would have a defense to a deficiency judgment under section 580d of the California Code of Civil Procedure should DIR or SISF elect to pursue nonjudicial foreclosure remedies, and nevertheless Guarantor expressly waives any and all benefits of any such defense to a deficiency judgment should DIR or SISF elect to exercise its nonjudicial foreclosure remedies (including waiver of Guarantor's defense under section 580d of the California Code of Civil Procedure).

Guarantor understands and agrees that (i) by waiving the anti-deficiency protections and the subrogation rights and defenses referred to in this Paragraph 13 and in Paragraph 14 below, which protections, rights and defenses might otherwise afford Guarantor with protection from a deficiency judgment, Guarantor can be held liable for a deficiency judgment following a judicial or non-judicial foreclosure sale (including a judicial or non-judicial foreclosure sale of a purchase money obligation) even if the price paid for the property at the non-judicial foreclosure sale is less than the fair value of the property; (ii) Guarantor is waiving its defense that the price paid for the property at a judicial or non-judicial foreclosure sale may not be equal to the fair value of the property; and (iii) by Guarantor waiving its right to a fair value hearing following the foreclosure sale that DIR or SISF can seek a deficiency against Guarantor up to the entire amount of the indebtedness secured by the Deed of Trust with interest and costs of sale less the amount paid for the property at the judicial or non-judicial foreclosure sale.

Without limiting the application of any of the other waivers contained herein, Guarantor waives all rights and defenses that Guarantor may have because, or to the extent, the Obligations are secured by real property. This means, among other things: (i) that DIR or SISF may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Self-Insurer; and (ii) that if DIR or SISF forecloses on any real property collateral pledged by Self-Insurer: (a) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale,

even if the collateral is worth more than the sale price, and (b) DIR or SISF may collect from Guarantor even if DIR or SISF, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Self-Insurer. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

14. **Additional Waivers; No Subrogation.** Until all the Obligations have been fully satisfied, Guarantor waives, to the fullest extent permitted by law (i) all rights of subrogation, contribution or indemnification against Self-Insurer or any other right or remedy against Self-Insurer arising from or relating to this Guaranty; (ii) all rights and benefits under section 2848 of the California Civil Code and any right to enforce any remedy which DIR or SISF now has or may hereafter have against in respect of the Obligations; (iii) any benefit of, and any right to participate in, any security, whether real or personal property, now or hereafter held by DIR or SISF for the Obligations; and (iv) all rights and benefits under sections 2849 and 2850 of the California Civil Code. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance of this Guaranty and of the existence, creation or incurring of new or additional Obligations, whether existing, created or incurred, any modification thereof or otherwise. Guarantor assumes the responsibility for being and keeping informed of the financial condition of Self-Insured and of all other circumstances bearing upon the risk of nonpayment of the Obligations which diligent inquiry would reveal, and agrees that DIR or SISF shall have no duty to advise Guarantor of information known to it regarding such condition or any such circumstances.

15. **Expenses and Fees.** Guarantor hereby agrees to be responsible for and to pay all reasonable costs and expenses, including, without limitation, attorneys' fees and foreclosure fees, incurred by DIR or SISF in connection with the collection of all the Obligations guaranteed hereunder and the defense or enforcement of any of DIR's or SISF's rights hereunder, whether or not suit is filed, and whether such collection be from Self-Insurer or from Guarantor.

16. This Agreement shall be binding upon the Undersigned, its successors, and assigns.

IF A CORPORATION:

Subscribed and sealed at _____

this _____ day of _____, 20____.

Attest:

CORPORATE SEAL

Company

Signature

Secretary

Title