

**GUARANTEE AND POSTPONEMENT OF CLAIM**

To: FIRSTONTARIO CREDIT UNION LIMITED (hereinafter called “the Credit Union”)

I/We, ……………………………………………………………………………………………………………………………………….

(Hereinafter called the “Guarantor”)

for valuable consideration hereby guarantee payment to the Credit Union (immediately after demand therefor as hereinafter provided) of all

debts and liabilities which ……………………………………………………………………………………………………………………….

…………………………………………………………………………………………………………………………………………………

(herein referred to as the “Borrower”) has incurred or is under or may in the future incur or be under to the Credit Union, whether arising from dealings between the Credit Union and the Borrower or from any other dealings which the Borrower may become in any manner whatever liable to the Credit Union;the liability of the Guarantor hereunder being limited to the sum of:

………………………………………………………………………………………………..Dollars ($………………………………………)

with interest (including compound interest) from the date of demand for payment.

THE GUARANTOR AGREES TO THE FOLLOWING TERMS AND CONDITIONS:

**1.** If more than one Guarantor executes this instrument the provisions hereof shall be read with all grammatical changes thereby rendered necessary and each reference to the Guarantor shall include the undersigned and each and every one of them severally and this

guarantee and all covenants and agreements herein contained shall be deemed to be joint and several.

**2.** The Credit Union may increase, reduce, discontinue or otherwise vary the Borrower’s credit facility, grant extensions of time or other indulgences, take and give up securities, abstain from taking, perfecting or registering securities, accept and compositions, grant releases and

discharges and otherwise deal with the Borrower and with other parties and securities as the Credit Union may see fit, and may apply all moneys received from the Borrower or others, or form securities, upon such part of the Borrower’s liability as it may think best, without prejudice to or in any way limiting or lessening the liability of the Guarantor under this guarantee.

**3**. The failure of the Credit Union to take any security that the parties hereto contemplate it would take or the failure of the Credit Union to perfect any security by registration of the security in the appropriate registry office shall not prejudice or in any way limit or lessen the liability of the Guarantor under this guarantee.

**4**. Any loss of or in respect of the unenforceability of any securities received or held by the Credit Union from the Borrower or any other person, whether occasioned by the fault of the Credit Union or for any other reason shall not discharge pro tanto or limit or lessen the liability of the Guarantor under this guarantee.

**5**. This shall be a continuing guarantee and shall cover present liabilities (if any) of the Borrower to the Credit Union and all liabilities incurred after the date hereof and shall apply to and secure any ultimate balance due or remaining due to the Credit Union and shall be binding as a continuing security on the Guarantor, provided that the Guarantor or the executors or administrators of the Guarantor may determine his or their further liability under this guarantee by thirty days’ written notice given to the Credit Union or the branch thereof and this guarantee shall not apply to any liabilities of the Borrower to the Credit Union incurred after the expiration of thirty days from the date of receipt of such notice by the Credit Union, but shall continue to apply to any of the Borrowers’ liabilities outstanding from and after the expiration of such thirty day period.

**6**. Any change or changes in the name of the Borrower, or (if the Borrower be a partnership) any change or changes in the membership of the Borrower’s firm by death or by the retirement of one or more of the partners or by the introduction of one or more other partners or (if the Borrower is a corporation) any reorganization or amalgamation with one or more corporations shall not affect or in any way limit or lessen the liability of the Guarantor hereunder and this guarantee shall extend to the person, firm or corporation acquiring or from time to time carrying on the business of the Borrower.

**7**. All moneys, advances, renewals and credits in fact borrowed or obtained from the Credit Union shall be deemed to form part of the liabilities hereby guaranteed notwithstanding any incapacity, disability or lack of limitation of status or of power of the Borrower or of the directors, partners or agents hereof, or that the Borrower may not be a legal entity, or any irregularity, defect or informality in the borrowing or obtaining of such moneys, advances, renewals or credits; and any amount which may not be recoverable from the Guarantor on the footing of a guarantee shall be recoverable from the Guarantor as principal debtor in respect thereof and shall be paid to the Credit Union after demand therefor as hereinafter provided.

**8**. Any account settled or stated by or between the Credit Union and the Borrower shall be accepted by the Guarantor as conclusive evidence that the balance or amount thereby appearing due by the Borrower to the Credit Union is so due.

**9**. Should the Credit Union receive from the Guarantor a payment or payments in full or on account of the liability under this guarantee, the Guarantor shall not be entitled to claim repayment against the Borrower or the Borrower’s estate until the Credit Union’s claims against the Borrower have been paid in full; and in case of liquidation, winding up or bankruptcy of the Borrower (whether voluntary or compulsory) or in the event that the Borrower shall make a bulk sale of any the Borrower’s assets within the bulk transfer provisions of any applicable legislation or any composition with creditors or scheme of arrangement, the Credit Union 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 liable up to the amount guaranteed, less any payments made by the Guarantor, for any balance which may be owing to the Credit Union by the Borrower; and in the event of the valuation by the Credit Union of any of its securities and/or the retention thereof by the Credit Union, such valuation and/or retention shall not, as between the Credit Union and the Guarantor, be considered as a purchase of such securities, or as payment or satisfaction or reduction of the Borrower’s liabilities to the Credit Union, of any part thereof.

**10.** The Guarantor shall make payment to the Credit Union of the amount of the liability of the Guarantor forthwith after demand therefor is made in writing and such demand shall be deemed to have been sufficiently made when an envelope containing it addressed to the Guarantor at the last address of the Guarantor known to the Credit Union is deposited, postage prepaid and registered, in the Post Office and the liability of the Guarantor shall bear interest from the date of such demands with payment in full both before and after judgement at the rate or rates then applicable to the liabilities of the Borrower to the Credit Union.

**11**. And for the further security of the Credit Union the Guarantor agrees:

**(A)** That any debts or claims against the Borrower now or at any time hereafter held by the Guarantor are and shall be held by the Guarantor for the further security of the Credit Union, and as between the Guarantor and the Credit Union are hereby postponed to the debts and claims against the Borrower now or at any time hereafter held by the Credit Union, and any such debts and claims of the Guarantor shall be held as trustee for the Credit Union and shall be collected, enforced or proved subject to and for the purposes of this agreement and any moneys received by the Guarantor in respect thereof shall be paid over to the Credit Union on account of its said debts and claims; and no such debt or claim of the Guarantor against the Borrower shall be released or withdrawn by the Guarantor unless the Credit Union’s written consent to such release or withdrawal is first obtained and the Guarantor shall not permit the prescription of any such debt or claim by any statute of limitations or assign any such debt or claim to any person other than the Credit Union or ask for or obtain any security or negotiable paper for or other evidence of any such debt or claim except for the purpose of delivering the same to the Credit Union and the Credit Union may at any time give notice to the Borrower requiring the

Borrower to pay to the Credit Union all or any of such debts or claims of the Guarantor against the Borrower and in such event such debts and claims are hereby assigned and transferred to the Credit Union; and in the event of the liquidation, winding up or bankruptcy of the Borrower (whether voluntary or compulsory) or in the event that the Borrower shall make a bulk sale of any of the Borrower’s assets within the bulk transfer provisions of any applicable legislation, or any composition with creditors or scheme of arrangement, any and all dividends or other moneys which may be due or payable to the Guarantor in respect of the debts or claims of the Guarantor against the Borrower are hereby assigned and transferred to and shall be due and be paid to the Credit Union, and for such payment to the Credit Union this shall be a sufficient warrant and authority to any person making the same; and the Guarantor shall at any time and from time to time at the request of and as required by the Credit Union, make, execute and deliver all statements of claims, proofs of claim, assignments and other documents and do all matters and things which may be necessary or advisable for the protection of the rights of the Credit Union under and by virtue of this instrument.

**(B)** The provisions of this clause are independent of and severable from the provisions of clauses 1-10 of this Guarantee and Postponement of Claim and shall remain in force whether or not the Guarantor is liable for any amount under clauses 1-10 and whether or not the Credit Union has received the notice referred to in paragraph 5; provided, however, that the provisions of this clause may be terminated by the Guarantor, by written notice to the Credit Union or the branch thereof, at any time when the Guarantor is not liable for any amount under clauses 1-10 by reason of the fact that the Borrower is not indebted or liable to the Credit Union.

**12.**  The Credit Union shall not be bound to exhaust its recourse against the Borrower or other parties, including other guarantors, or the securities it may hold before being entitled to payment from the Guarantor under this guarantee.

**13.**  This Guarantee and Postponement is in addition and without prejudice to any securities of any kind (including without limitation guarantees and postponement agreements whether or not in the same form as this instrument) now of hereafter held by the Credit Union.

**14.**  There are no representations, collateral agreements or conditions with respect to this instrument or affecting the Guarantor’s liability hereunder other than as contained herein.

**15.** The terms and conditions set out in this guarantee shall not merge with any judgement which may be obtained against the Guarantor or

the Borrower.

**16.**  This Guarantee and Postponement shall be construed in accordance with the laws of the Province of Ontario, and the Guarantor agrees that any legal suit, action or proceeding arising out of or relating to this instrument may be instituted in the courts of such province, and the Guarantor hereby accepts and irrevocably submits to the jurisdiction of the said courts and acknowledges their competence and agrees to be bound by any judgement hereof, provided that nothing herein shall limit the Credit Union’s right to bring proceedings against the Guarantor elsewhere.

**17**. This Guarantee and any amendments, waivers, consents or supplements hereto may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, and all taken together shall constitute a single contract. This Guarantee and the other Loan Documents constitute the entire contract among the parties with respect to the subject matter hereof and supersede all previous agreements and understandings, oral or written, with respect thereto. Delivery of an execute counterpart of a signature page to this Guarantee by facsimile or in electronic (i.e. “PDF” or “TIFF”) format shall be effective as delivery of a manually executed counterpart of this Guarantee.

**18.**  This Guarantee and Postponement shall extend to and enure to the benefit of the successors and assigns of the Credit Union, and shall be binding upon the Guarantor and the heirs, executors, administrators and successors of the Guarantor.

**19.** The Guarantor hereby acknowledges receipt of a copy of this Guarantee.

Signed, Sealed and Delivered this.......................... day of.....................................................20.............

at...............................................................................................ONTARIO in the presence of:

WITNESS: SIGNATURE OF GUARANTOR

........................................................ ………………………………………………………

Guarantor

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Guarantor

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\*Corporation and/or Trade Name if applicable.

Title....................................................... Per............................................................................................

Authorized Signing Officer

(I have the authority to bind the corporation)

Title....................................................... Per............................................................................................

Authorized Signing Officer

(I have the authority to bind the corporation)