

GUARANTEE



by

[]

in favour of

[]

Property: []

Version 2
December
2005



GUARANTEE

by

[] **LIMITED**, incorporated under the Companies Acts (Registered Number []), and having their Registered Office at [] ("**Guarantors**");

in favour of

[] **LIMITED**, incorporated under the Companies Acts (Registered Number []), and having their Registered Office at [], and includes where the context so requires their successors as landlords under the Lease ("**Landlords**");

WHEREAS:-

- (A) The Landlords are in right of the landlord's part of the Lease.
- (B) The Tenants are in right of the tenant's part of the Lease.
- (C) The Guarantors have agreed to guarantee the obligations of the Tenants under the Lease;

IT IS AGREED as follows:-

1 Definitions and Interpretation

1.1 In this Guarantee:-

"Business Day" means a day on which clearing banks in [Edinburgh and Glasgow] are open for normal business;

"Guaranteed Obligations" means the obligations of the Tenants under the Lease referred to in Clause 2.1 of this Guarantee;

"Interest" means interest on the sum in question at [] per cent per annum above the base rate from time to time of [[] Bank] from the date that such sum is due for payment or, if there is no such date specified, the date of demand for such sum until such sum is paid;

"Lease" means the lease between [] and [] dated [] and [] and [about to be] registered in the Books of Council and Session and [also recorded in the Division of the General Register of Sasines for the County of []] [the Tenants' interest in which is registered in the Land Register of Scotland under Title Number [] on []];

"Property" means [] being the subjects more particularly described in the Lease;

"Relevant Event" means any of the following events or circumstances:

- (i) The Tenants going into liquidation and the liquidator refusing to adopt or otherwise disclaiming the Lease;
- (ii) The Tenants having a receiver or administrator appointed;
- (iii) [The Tenants (not being an incorporated company) becoming insolvent or apparently insolvent or signing a trust deed for creditors and the trustee refusing to adopt or otherwise disclaiming the Lease; or]

- (iv) The Tenants being dissolved, struck off or otherwise ceasing to exist;
- (vi) The Landlords serving notice on the Tenants that an event has occurred which entitles the Landlords to irritate the Lease; or
- (v) The Lease being terminated by reason of irritancy.

"Tenants" means [[] Limited, incorporated under the Companies Acts (Registered Number []) and having their Registered Office at []] [[] residing at [].

- 1.2 Unless the context otherwise requires, words and expressions which are defined in the Lease will bear the same meanings for the purposes of this Guarantee.

2 Guarantee

- 2.1 The Guarantors irrevocably and unconditionally guarantee to the Landlords:

- 2.1.1 full and punctual payment by the Tenants of all rent and other sums which are now or may at any time be or become due by the Tenants to the Landlords under the Lease; and
 - 2.1.2 full and punctual performance by the Tenants of the whole other obligations which are now or may at any time hereafter be or become due or prestable by or against the Tenants under the Lease.
- 2.2 If the Tenants fail to pay or perform any of the Guaranteed Obligations as and when they fall due the Guarantors will on demand by the Landlords make payment or effect performance of the Guaranteed Obligations in question and will pay in addition:
- 2.2.1 all liabilities, losses, costs, damages and expenses incurred by the Landlords by reason of or in connection with any failure by the Tenants to make payment or to effect performance of the Guaranteed Obligations in question together with Interest; and
 - 2.2.2 all costs and expenses properly and reasonably incurred by the Landlords in connection with the enforcement of this Guarantee together with Interest.

3 Primary Obligation

The obligations of the Guarantors under this Guarantee will be independent primary obligations and not merely those of guarantor or cautioner and if any of the Guaranteed Obligations are not, or cease to be valid and enforceable for any reason whatever (whether or not known to the Landlords) or for any reason are not recoverable or capable of performance by the Guarantors under Clause 2 the Guarantors will still be liable to the Landlords in respect of such Guaranteed Obligations as if they were fully valid and enforceable and/or recoverable or capable of performance and the Guarantors were principal debtor in place of the Tenants.

4 Indemnity

The Guarantors undertake to indemnify the Landlords on demand against all liabilities, losses, costs, damages and expenses which the Landlords may incur by reason of or in connection with any failure by the Tenants to make payment of or perform any of the Guaranteed Obligations as and when they fall due or as a result of any of the Guaranteed Obligations being or becoming void or unenforceable for any reason or the Guaranteed Obligations for any reason not being recoverable or capable of performance under Clause 2, together with Interest.

5 **Guarantors to take new lease**

Without prejudice to any other provision of this Guarantee if a Relevant Event occurs, the Landlords shall be entitled to serve notice on the Guarantors within [six] months after the Relevant Event requiring the Guarantors to accept, as required by the Landlords, either:-

- 5.1 a new lease of the Property for a period equal to the residue of the term of the Lease which would have remained if the Relevant Event had not occurred, at the same rent and on the same terms as the Lease commencing on the date of the Relevant Event, but treating any tenants' works to the Property by reference to the date of entry under the Lease and not the date of the Relevant Event; or
- 5.2 an assignation to them of the Tenants' interest under the Lease, effective from the date of the Relevant Event.

6 **Duration**

This Guarantee will remain in force so long as any liability (including any future or contingent liability):

- 6.1 on the part of the Tenants under the Lease (including during any period of tacit relocation or continuation of the term of the Lease by virtue of any statutory provision), or
- 6.2 on the part of the Guarantors under this Guarantee

remains unfulfilled unless discharged by the Landlords in accordance with Clause 8.

7 **No Exclusions**

This Guarantee will not be discharged or prejudiced by:-

- 7.1 the Landlords holding, acquiring, failing to perfect, releasing or giving up any obligation, security or remedy (present or future) for the obligations of the Tenants under the Lease or any neglect, delay or forbearance on the part of the Landlords in enforcing such obligation, security or remedy;
- 7.2 the Landlords giving time or any other indulgence to the Tenants;
- 7.3 any variation, whether formal or informal, of the terms of the Lease or the implementation of any rent review provisions in the Lease;
- 7.4 the Landlords irritating the Lease; [or]
- 7.5 [the Landlords releasing any person(s) comprised in the Tenants from liability under the Lease, or]
- 7.6 any other act, omission or event whereby (but for this Clause) the Guarantors would be discharged in whole or in part from this Guarantee

in each case with or without intimation to or the agreement of the Guarantors.

8 **Restriction of Guarantee**

If the Tenants assign their interest under the Lease in accordance with the terms of the Lease, or the Landlords accept a renunciation of the tenants' interest under the Lease, the Landlords will at the request and cost of the Guarantors grant a valid discharge of this Guarantee as at

the date of valid intimation of such assignation or the effective date of such renunciation (as the case may be) provided that there are no outstanding claims under the Guarantee, or if there are any such claims, upon such claims being satisfied in full.

9 Assignment

- 9.1 The Landlords have the right to assign this Guarantee to their successors as landlords under the Lease without the consent of the Guarantors.
- 9.2 The Guarantors do not have the right to assign or transfer their rights or obligations under this Guarantee.

10 Postponement of Claims by Guarantor

- 10.1 Until the Guaranteed Obligations have been fully and unconditionally paid or discharged, the Guarantors shall not be entitled to share in any security held or money received by the Landlords on account of the Guaranteed Obligations.
- 10.2 Until the Guaranteed Obligations have been fully and unconditionally paid and discharged, the Guarantors waive their rights of subrogation, reimbursement and indemnity against the Tenants and any other person and any other right they may have to stand in the place of the Landlords in respect of any security from or money payable by the Tenants or any other person.
- 10.3 In the event of the liquidation, administration or other insolvency or dissolution of the Tenants the Guaranteed Obligations shall be deemed to continue to be due and outstanding until fully and unconditionally paid and discharged. The Landlords will be entitled to claim in the liquidation, administration or other insolvency of the Tenants for the full amount of the Guaranteed Obligations and to retain the whole of the dividends from such claim to the exclusion of any rights of the Guarantors as guarantor in competition with the Landlords until the Landlords' claim is satisfied in full.

11 Exclusion of Set Off

All payments due by the Guarantors under this Guarantee will be made without any retention, deduction or set-off or counterclaim and free from any deduction or withholding for or on account of any taxes or other charges in the nature of taxes imposed by any competent authority. If any such deduction or withholding shall be required by law the Guarantors will pay the Landlords such additional amount as may be necessary to ensure that the Landlords receive the full amount of the relevant payment as if such deduction or withholding had not been made.

12 Certificate

A certificate signed by any authorised signatory on behalf of the Landlords will, save in the case of manifest error, conclusively constitute the amount of the Guaranteed Obligations at the relevant time for the purposes of Clause 2.1.1 and all other purposes of this Guarantee.

13 Costs

- 13.1 The Guarantors will pay the Landlords on demand:
 - 13.1.1 the legal fees and expenses reasonably and properly incurred by the Landlords in connection with the preparation and execution of this Guarantee;

- 13.1.2 the costs of registering this Guarantee in the Books of Council and Session and of obtaining [three] extracts ([one] of which will be delivered to the Guarantors' solicitors);
- 13.1.3 the legal fees and expenses reasonably and properly incurred by the Landlords in connection with the preparation and completion of any new lease or assignation entered into in terms of, or pursuant to, Clause 5 including the registration dues on such new lease or assignation [and of obtaining [three] extracts (one of which will be delivered to the Guarantors' solicitors)];
- 13.1.4 all Value Added Tax on any of the costs and expenses set out above.
- 13.2 If the amounts demanded under Clause 13.1 are not paid within [14] days of demand the Guarantors will pay Interest on such amounts.
- 13.3 The Guarantors will be responsible for any Stamp Duty Land Tax chargeable on any such new lease or assignation.

14 Notices

- 14.1 Any notice, demand, request or certificate required by this Guarantee will be in writing and may be delivered personally, sent by post or transmitted by fax to the relevant party [using the relevant details specified in Clause 14.3].
- 14.2 Any notice, demand, request or certificate will be deemed to be received:
- 14.2.1 if delivered personally, (with proof of delivery) at the time of delivery;
- 14.2.2 if sent by recorded delivery post, 48 hours after the date of posting; and
- 14.2.3 in the case of fax, at the time when the sender's fax machine confirms transmission;

Provided that if, in the case of personal delivery or transmission by fax, such delivery or transmission occurs outwith normal business hours on a Business Day or on a day which is not a Business Day, delivery will be deemed to occur on the next Business Day.

- 14.3 [The details referred to in Clause 14.1 are:

[Guarantors]

Address: []

Fax Number: []

For the attention of: []

[Landlords]

Address: []

Fax Number: []

For the attention of: [];

or such other address, fax number or person as may be notified in writing from time to time by the relevant party to the other party for the purposes of this Clause.]

15 Applicable Law and Jurisdiction

This Guarantee shall be governed by and construed in accordance with the law of Scotland and in so far as not already subject thereto the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish Courts.

16 Registration

The Guarantors consent to the registration of this Guarantee and any certificate pursuant to this Guarantee for preservation and execution: IN WITNESS WHEREOF