Guarantee of Claim-Promissory Note

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This document is a Guarantee of Claim-Promissory Note (the “Agreement”) is effective [DATE],

**BETWEEN: [FIRST PARTY NAME]** (the "Lender"), a company organised and existing under the laws of the [COUNTRY], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [SECOND PARTY NAME]** (the "Borrower"), a company organised and existing under the laws of the [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

**AND: [THIRD PARTY NAME]** (the "Guarantor"), a company organised and existing under the laws of the [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

WHEREAS the Lender has entered into a Contract of Loan and Hypothecs with [COMPANY NAME] (the “Borrower”) pursuant to which the Lender has made a loan in the amount of [AMOUNT] [COUNTRY] currency bearing interest at the rate of [PERCENTAGE %] per annum, repayable in [NUMBER] equal consecutive monthly instalments commencing on [DATE], for the purpose of assisting the Borrower in the acquisition of [SPECIFY], and the Borrower has granted a movable hypothec without delivery on certain equipment described therein, including without limitation the equipment so purchased, in favour of the Lender, the whole upon the terms and conditions set forth therein (the “Contract”);

WHEREAS the Borrower has executed a term promissory note in favour of the Lender *in re*spect of the aforesaid loan (the “Note”);

WHEREAS the Financing Proposal dated [DATE] made by the Lender to the Borrower and accepted by the Borrower (the “Proposal”) renders the said loan conditional upon the granting by each of [NAME] and [NAME] (collectively, the “Guarantors”) of a postponement of claim in favour of the Lender, and of an unconditional personal guarantee of the obligations of the Borrower to the Lender;

WHEREAS the Guarantors have each intervened to the Contract as surety for the Borrower;

WHEREFORE, in consideration of the advances to be made by the Lender to the Borrower pursuant to the Contract and the Note, and for other good and valuable consideration, the Guarantors hereby, solidarity with the Borrower and each other, irrevocably guarantee the performance and payment, forthwith after demand therefor as hereinafter provided, of all obligations of the Borrower to the Lender pursuant to the Contract and the Note (the “Obligations”), including any costs and expenses incurred with respect to or arising out of such Obligations or any securities therefor, or costs reasonably incurred by or awarded to the Lender in connection with any proceedings taken against the Borrower or one or both of the Guarantors or any moneys paid by the Lender on account of Taxes (as hereinafter defined), wages, insurance or the remuneration or costs of any liquidator, trustee, agent or other person, or on any other account whatsoever, the whole up to an aggregate amount of [AMOUNT].

AND THE GUARANTORS HEREBY SOLIDARILY AGREE WITH AND IN FAVOUR OF THE LENDER AS FOLLOWS:

1. THAT this shall be a continuing guarantee and shall secure the present Obligations and all Obligations incurred or arising after the date hereof of the Borrower to the Lender and shall secure the ultimate balance due from the Borrower to the Lender and shall be binding as a continuing security on the Guarantors, up to the maximum aggregate amount of [AMOUNT].
2. THAT all benefits of discussion and division are hereby renounced, and the Lender shall not be bound to exhaust its recourses against the Borrower or others or the securities (which term, as used herein, includes other guarantees) they may hold nor to value such securities before being entitled to payment from one or both of the Guarantors.
3. THAT this guarantee shall be in addition to and without prejudice to any other securities by whomsoever given held at any time by the Lender and the Lender shall be under no obligation to marshal in favour of the Guarantors any such securities or any of the funds or assets the Lender may be entitled to receive or have a claim upon, and the Lender may, without diminishing the Guarantors’ liability hereunder, grant extensions of time or other indulgences to the Borrower or others and give up or modify, vary, exchange, renew or abstain from perfecting or taking advantage of any securities, and may discharge any party or parties and accept or make any compositions or arrangements and realise any securities when and in such manner as the Lender may see fit and in no case shall the Lender be responsible or shall the Guarantors be released either in whole or in part for any act or omission in connection with the registration or filing of any security under any [YOUR COUNTRY LAW] or otherwise or the realisation of any security or the postponement of such realisation or having sold any security at an under value.
4. THAT all dividends, compositions, proceeds of security valued and payments received by the Lender from the Borrower or from others shall be deemed to be payments in gross without any right on the part of the Guarantors to claim *in re*duction of the liability under this guarantee the benefit of any such dividends, compositions, proceeds or payments or any securities held by the Lender or proceeds thereof and the Guarantors shall have no right to be subrogated in any rights of the Lender until the Lender shall have received payment in full of the Obligations of the Borrower to the Lender hereby guaranteed.
5. THAT the Guarantors shall pay all amounts payable hereunder free and clear of and without liability for, and subject to the provisions of Section 6, without deduction or withholding for, and to pay and to reimburse the Lender upon demand for any payment made by it with respect to, and to indemnify and hold the Lender harmless against any liability for (i) any and all present and future taxes (including stamp taxes), levies, imposts, deductions, charges, withholdings, duties, fees, interests, fines and penalties imposed by the jurisdiction from which payment is made on or in connection with the payment of any amount required to be paid to the Lender pursuant to this guarantee or imposed by any jurisdiction with respect to the preparation, execution, delivery, registration, performance, amendment or enforcement of this guarantee (all of the foregoing items are here*in re*ferred to as “Local Taxes”); and (ii) any and all present and future taxes (including stamp taxes), levies, imposts, deductions, charges, withholdings, duties, fees, interests, fines and penalties which shall be due in any jurisdiction with respect to the payment of or reimbursement for any Local Taxes by the Lender (all of the foregoing listed in clauses (i) and (ii) is here*in re*ferred to as “Taxes”).
6. THAT if one or both of the Guarantors is required by law to make any deduction or withholding *in re*spect of any Taxes from any amount payable under this guarantee or is prevented by operation of law from paying, causing to be paid or reimbursed for the payment of any Taxes, the Guarantors shall pay such additional amount as may be necessary in order that the net amounts received by the Lender after such deduction or withholding and after the deduction of any such Taxes not paid, caused to be paid or reimbursed for by anyone thereof shall equal the amounts which would have been realised by the Lender if such deduction or withholding had not been made and if such Taxes had been paid, caused to be paid or reimbursed by the Guarantors. Such additional amounts shall be paid (i) in the case of amounts payable as a result of a deduction or withholding from an amount payable under this guarantee, on the date the latter amount is payable and (ii) in the case of an amount payable as a result of the failure by the Guarantors to pay or reimburse for Taxes, on the earlier of the date on which such Taxes are due and the date on which such Taxes are paid by the Lender.
7. THAT with respect to any of the said Taxes, the Guarantors shall make any required payment thereof within the time allowed under law and, within [NUMBER] days thereafter, shall furnish to the Lender such certificates, receipts and other documents as may be required to establish any tax credit to which the Lender may be entitled. If the Lender obtains a credit or similar tax benefit with respect to income taxes imposed by a jurisdiction in which it is located or under the [YOUR COUNTRY LAW] of which it is organised, on the basis of the payment of such Taxes by the Guarantors, the Lender shall promptly remit to the Guarantors an amount equal to the amount of such credit or benefit as is, equitably attributable to such payment by the Lender having taken into account all its dealings giving rise to similar credits or benefits *in re*lation to the same tax period. If subsequently, for any reason, the amount of such credit or benefit is directly or indirectly reduced, the Guarantors shall upon request pay to the Lender an amount equal to the amount of such reduction.
8. THAT any and all monies received by the Lender from the Borrower or others or from securities and which are properly applicable *in re*duction of the Borrower’s Obligations to the Lender may be applied by the Lender upon such part of the said Obligations as the Lender sees fit.
9. THAT all payments due to the Lender hereunder by the Guarantors whether *in re*spect of the Obligations or otherwise, shall be made by the Guarantors without any reduction whatsoever, including, without limitation, any reduction for any set-off, recoupment or counterclaim (whether, in any case, *in re*spect of an obligation owed by the Lender to one or both of the Guarantors or any other guarantor and, in the case of a counterclaim, whether sounding in tort, delict, contract or otherwise) or Tax.
10. THAT the Lender shall not be concerned to see or enquire into the powers of the Borrower or its directors or other agents, acting or purporting to act on its behalf, and monies advanced or credits in fact borrowed or obtained through the Lender in professed exercise of such powers shall be deemed to form part of the Obligations hereby guaranteed even though the borrowing or obtaining thereof is in excess of the powers of the Borrower or of the directors, partners or other agents thereof or is otherwise irregular or defective or is informally effected, the whole whether or not known to the Lender, and any monies advanced or credits used for the payment of the Obligations of the Borrower shall be deemed to form part of the Obligations hereby guaranteed.
11. THAT no change in the name, objects, business, membership, directorate, capital stock or constitution of the Borrower, nor any reorganisation of the Borrower or its amalgamation with another or others, or the sale, transfer or other disposal of its business or assets, in whole or in part, to another or others, shall in any way affect the Guarantors’ liability and obligations hereunder, either with respect to transactions occurring before or after any such change, reorganisation, amalgamation, sale, transfer or disposal.
12. THAT where the Borrower becomes bankrupt or makes an assignment for the benefit of creditors or if any circumstances arise necessitating the Lender to file its claim against the Borrower and to value its securities, the Lender shall be entitled to place such valuation on its securities as it may see fit and the filing of such claim and the valuing of securities shall not in any way prejudice or restrict the claim of the Lender against the Guarantors and in no way discharge the Guarantors from their liabilities or obligations hereunder to the Lender, either in whole or in part.
13. THAT, without in any way limiting the generality of any of the foregoing provisions, the Guarantors’ liability and obligations hereunder shall not be impaired, affected or terminated by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which, but for this provision, might operate to release, discharge or exonerate the Guarantors from all or any part of their liabilities or obligations hereunder or reduce, impair or affect such liabilities or obligations or cause all or any part of such liabilities or obligations to be irrecoverable from or unenforceable against the Guarantors or to discharge, reduce, affect or impair any of such liabilities or obligations including, without limitation
    1. the recovery of any judgement  against the Borrower, any other guarantor or any other person or any action to enforce the same;
    2. any amendment or supplement to, or restatement or variation of the Contract, the Note or any of the security documents contemplated therein, or any other document or collateral security, made at any time and from time to time; and
    3. any irregularity, unenforceability or invalidity of any Obligations, other than the obligation to repay the loan and to pay all interest accrued thereon, of the Borrower under the Contract, the Note, or any other document or security contemplated therein or relating thereto, which results from causes which are inherent to the Borrower.
14. THAT any account settled or stated by or between the Lender and the Borrower, or, if any such account has not been so settled or stated immediately before demand for payment under this guarantee, any account stated by the Lender, shall be accepted by the Guarantors, in the absence of manifest error, as conclusive evidence of the amount which at the date of the account so settled or stated is due by the Borrower to the Lender or remains unpaid by the Borrower to the Lender.
15. THAT the Guarantors shall make payment to the Lender of the amount of their liability to the Lender forthwith after demand therefor is made in writing and such demand shall be deemed to have been duly given or made when delivered to the Guarantors (by prepaid courier, or by telecopier, telex or hand delivery) at their respective addresses and attention set forth below or at such other address of which the Guarantors may hereafter notify the Lender in writing. All payments hereunder shall be made to the Lender, at [FULL ADDRESS], [COUNTRY], [COUNTRY], or at such other address as the Lender may give notice of from time to time to the Guarantors.
16. THAT the Guarantors shall be liable to the Lender for the total amount of all Obligations of the Borrower to the Lender whether such Obligations are incurred prior to or subsequent to the notice demanding payment together with interest thereon at the same rate or rates as are then payable by the Borrower *in re*spect of the Obligations herein guaranteed from the date of demand for payment or, in case of Obligations incurred or arising subsequent to such demand, from the date of the incurring or arising of such Obligations.
17. THAT for the further security of the Lender and without in any way diminishing the Guarantors’ liability, all debts and liabilities, present or future, of the Borrower to the Guarantors, are hereby assigned and postponed to the liabilities of the Borrower to the Lender. Upon the occurrence of a default by the Borrower under the Contract or the Note, all moneys received by the Guarantors or their respective legal representatives, successors or assigns, *in re*spect thereof shall be received as depositary for the Lender and forthwith upon receipt shall be paid over to the Lender; and that this assignment and postponement is independent of and severable from the foregoing guarantee and shall remain in effect whether or not the Guarantors are liable for any amount under the said guarantee.
18. THAT the Guarantors acknowledge that any defences which the Borrower might have been able to set up against the Lender *in re*spect of any claim by the Lender against the Borrower under the Contract or the Note or in [YOUR COUNTRY LAW], including without limitation any claim of non-performance by the Lender of its obligations under the Contract or the Note or in [YOUR COUNTRY LAW], and any right of compensation or set-off which the Borrower might have otherwise had against the Lender under the Contract or the Note or in [YOUR COUNTRY LAW], are expressly excluded to the same extent as by the terms of the Contract, and that the Guarantors shall not be entitled to set up any such defence in the event of a claim by the Lender against the Guarantors pursuant to this guarantee.
19. THAT the Guarantors acknowledge that the essential stipulations of the present guarantee were not imposed by the Borrower and were negotiable and that it is accordingly not a contract of adhesion within the meaning of article [NUMBER] of the Civil Code of [COUNTRY].
20. THAT the Guarantors acknowledge that they have signed same in a free and enlightened manner, without error, fear or lesion, intending in good faith to be bound thereby, and has had the benefit of independent legal counsel in connection therewith.
21. THAT the Guarantors acknowledge that the clauses of the present guarantee, the Contract, the Note and the Proposal have been expressly brought to the Guarantors’ attention and that an adequate explanation of the nature and scope of the clauses thereof has been given to each of them.
22. THAT the Guarantors acknowledge that the said clauses are not excessively or unreasonably detrimental to the Guarantors and are not, therefore, are not in good faith.
23. THAT there are no representations, collateral agreements or conditions with respect to this agreement affecting the Guarantors’ liability hereunder other than those contained herein, in the Contract, the Note or the Proposal.
24. THAT this agreement shall extend to and enure to the benefit of the Lender and its successors and permitted assigns and shall extend to and be binding upon the Guarantors and their respective heirs, legal representatives, successors and assigns. The Guarantors may not cede, assign or transfer any of their obligations hereunder without the express prior written consent of the Lender.
25. Unless there be something in the subject or the context inconsistent therewith or unless otherwise expressly defined herein, all capitalised words and expressions used herein shall have the same meaning as that ascribed to them in the Contract, as same may be amended, supplemented and restated at any time and from time to time.
26. In this agreement, unless there be something in the subject or the context inconsistent therewith, words importing the singular only shall include the plural and *vice versa*, and words importing the masculine gender shall include the feminine gender and *vice versa*.
27. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.
28. This agreement and the interpretation and enforcement thereof shall be governed by and in accordance with the [YOUR COUNTRY LAW] of the Province of [COUNTRY] and, without prejudice to the ability of the Lender to enforce this agreement in any other proper jurisdiction, the parties hereto irrevocably submit and attorn to the jurisdiction of the Courts of the Province of [COUNTRY].
29. Any provision of this agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be, to the extent permitted by law, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

LENDER BORROWER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

GUARANTOR

Authorised Signature

Print Name and Title