

Lorman Seminar
February 9, 2010
Anatomy of a Good Guy Guaranty
Presented by John Busey Wood
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I. History of a Limited Good Guy Guaranty - What is a limited “Good Guy Guaranty” and how does it differ from standard Guaranty of Payment and Performance – Non-standard use of term or agreement on uniform attributes in the United States consist of the following general topics:

1. Originally introduced in the late 1970s because of increased costs and expenses associated with tenants holding over in space while not paying or performing. The instrument was given by the controlling member or members of the tenant entity and substituted with new controlling members in the event of assignment or change in ownership of the tenant. The intent was to make the tenant remove from the premises by exerting financial pain on the decision maker. It is really a “springing Bad Guy Guaranty”. It is not (i) a “hell or high water financing instrument”, (ii) credit enhancement instrument, (iii) current calculable reportable or Balance Sheet liability (too remote, conditional and un-calculable) , (iv) a collateral security for a lease or in lieu of a Security Deposit, and (v) not really a guaranty of payment or performance and certainly not, if and when activated or called upon, given by a “Good Guy”.

2. Eviction or disposes recovery of space could in many jurisdictions take up to 2 years to evict a defaulting tenant while being required by common or statutory laws to provide services and electricity to the premises.

3. Created to “incentivize” good behavior and avoid the largest budget problem of legal fees and costs to obtain possession of the space and remarketing it. Space is difficult to re-market when ability to deliver it free of the holdover tenant is uncertain. It is a bad guy’s “Behavioral Modification Instrument”.

4. Lost rental and re-rental being the biggest concern of the landlord and inducement of the controlling shareholder to move the holdover tenant being paramount. May be in addition to traditional unlimited guaranty and can be layered or joint and several for multiple owners of tenant.

II. Contrasting the Limited Good Guy Guaranty from the Traditional “Hell or High Water” unlimited payment and performance guaranty – Review of the form of traditional Guaranty of Payment and Performance (Exhibit “A”). Attributes of the traditional unlimited payment and performance guaranty:

1. Guaranty issued by any entity with sufficient credit to guaranty the payment and performance of all terms of the lease. Credit and unconditionality of the document were more important than control of the tenant.
2. Issued as a substitute for cash security deposit as a “bankruptcy proof” benefit to a landlord.
3. Continued irrespective of extension of the lease, renewal of the lease or assignment to unrelated entities of the guarantor.
4. Unconditional, unlimited, always in “stand-by” for payment and performance and the traditional guaranty did not act as a surety or second back stop. Could be drawn on or called upon irrespective of whether the tenant was of “first resort”. The unconditional guaranty could be called upon even if the tenant was not pursued or was protected by bankruptcy.
5. Did not depend on validity of the lease and unaffected by tenant defenses.

III. Significant Terms of the Limited Good Guy Guaranty – While Good Guy Guaranty forms come in all types, shapes and obligations, the significant customary terms are highlighted below:

1. Usually contains (i) a guaranteed period of time or “gap period”, (ii) a limited and specified amount of payment such as fixed rent and possibly additional rentals, and (iii) specified limited specific scope of performance obligations other than payments occurring during holdover. Performance obligations can include insurance of space, maintenance and compliance obligations and redelivery conditions upon removal, to name a few. Almost all Good Guy Guaranty forms include specific indemnity or obligations for reimbursement for and indemnity with respect to the legal and related costs to remove the tenant and regain control of the space. The typical “gap period” commences upon default in payment or performance or, more beneficial to a guarantor, after termination of the lease. Some “gap periods” commence retroactively to a period such as 90 days before the default or before the date that the tenant gives notice of its difficulty.
2. Beware of the hidden obligations buried in the definition of the “gap period obligations”:

Examples – a) Obligations defined as rentals “commencing from default and continuing until tenant vacates the space and delivers the premises as required under the lease” (i.e. rent during holdover period and redeliver space and keys and in the condition required at the end of the lease!) The end of the “gap period” may be a long time if tenant technically does not deliver or surrender the keys or does not or can not restore the space to the end of term delivery condition required by the lease. Some redelivery conditions are like the removal of the structural bank vault in one of the Park Avenue buildings.

Months can go by while trying to obtain demolition permits and work contracts. Some redelivery conditions can include costly legal compliance.

– b) Obligations defined as “all financial obligations payable by the tenant which occur during the “gap or guaranty period”. If the tenant holds over and the landlord during the holdover or “gap period” terminates the lease via *condition of limitation*, the tenant could be obligated for all accelerated rentals and damages triggered and accruing by the termination of the lease during the Good Guy Guaranty Period! This is not of course the conventional intended limited guaranty, but clauses are drafted this way to be “crafty”.

3. It is not uncommon for the landlord to also tack on a certain obligations of a guarantor for an initial period of a new lease. For instance the “obligations” can also be for all unamortized brokerage commissions and work allowances or “Landlord’s Work” for initial preparation of the leased space in the event of default or termination of the lease within the first two years of occupancy.

4. Less uniform are the stated conditions to end the obligations of the “gap period”. The simplest end of “gap period” is when the tenant “surrenders” the space. Hidden conditions such as return of keys, redelivery of the space in compliance with laws and in a condition such as demolished or restored to pre alteration condition being dealt with by adding those absolute or certain costs to the rentals calculated for the “gap period” before surrender of the premises. This makes enforcement of the good guy guaranty less difficult since there will be little ability to defend against the additional obligations if they are specified and liquidated at an amount or can be determined without argument over timing and control of the space etc. This is especially true for removal of liens or violations recorded against the space or building which are the result of the tenant.

5. It is not uncommon for the landlord also to require a period of time to be added onto the gap period to allow for “down time” loss of rentals during the “re-marketing” of the space. Such clauses usually add 6 months for instance onto the end of the period after the tenant surrenders the space. The theory here of course is that the space can not with certainty be marketed as “available or deliverable” until the tenant is out. Nothing is more chilling on the marketing of space than for a prospective occupant to know that there is a “holdover” condition.

6. Generally good guy guaranty obligations end at the subleasing or assignment of the lease to a non-related or non-affiliated tenant entity. The assignment and subleasing rights in a lease and in the guaranty can be conditioned on the substitution of a new Limited Good Guy Guaranty or assumption thereof by the controlling parties of the new occupant. Generally good guy guaranty obligations do not end if the lease is extended or renewed. They are not also limited to the original space and should cover additional or option space added. Care and attention needs to be given for the effect of assignments of leases resulting from change in issued shares of a corporate or limited liability company. The intent of the guaranty to incentivize removal of a “holdover”

tenant is defeated if the new controlling shareholder or member is not , as a condition to the change in share ownership or control, required to provide a good guy guaranty.

7. Generally a good guy guaranty can be given by an individual or individuals that control the tenant occupant and certainly can be given by a corporate entity or its majority shareholders or limited liability company or its members. Good guy guaranties can be layered for different amounts, periods or different persons. While it is usually a good idea to make multiple or layered good guy guaranty documents with only one guarantor for each document or instrument, I have seen instruments with multiple guarantors “jointly and severally”. Multiple or layered guaranty documents and their obligations should be coordinated to avoid duplication and for ease of calculation of contributions for recoupment by the guarantors. Some jurisdictions allow defenses to the guarantors for duplicate payments or duplicate or overlapping “gap periods”.

8. Good guy guaranty obligations can be secured by security deposits and as such should be able to avoid issues in the event of bankruptcy of the tenant entity and also be outside the limitation of damages under the bankruptcy code if properly defined in the document.

Attachments for later review are:

Traditional Form of Un-Limited Guaranty of Payment and Performance (Exhibit “A”)

Landlord’s Form of Limited Good Guy Guarantee (Exhibit “B”)

Tenant’s Form of “more” Limited Good Guy Guarantee (Exhibit “C”)

Traditional Un-Limited Guaranty of Payment and Performance (Exhibit "A")

JOINT AND SEVERAL
GUARANTY OF PERFORMANCE AND OBLIGATIONS

PREMISES:

LANDLORD:

TENANT:

DATE OF LEASE AND THIS GUARANTY:

GUARANTOR:

1. In consideration of, and as an inducement for, the granting, execution and delivery of the above-captioned Lease (hereinafter the "Lease") and in further consideration of the sum of One (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned Guarantor, (which term shall be deemed to include the named Guarantor and its successors and assigns), a corporation having offices at , New York, New York hereby, absolutely, unconditionally and irrevocably guarantees to Landlord the full and prompt performance and observance of all the Tenant's obligations under the Lease, including, without limitation, the full and prompt payment of all rent and additional rent (including, without limitation, Landlord's reasonable attorneys' fees, expenses and disbursements for the collection thereof) payable by Tenant under the Lease and Tenant's indemnity obligations benefiting Landlord under the Lease (hereinafter all such obligations of Tenant are collectively referred to as the "Obligations"), all irrespective of the validity, binding effect, legality or enforceability of the Lease or whether the Lease shall have been duly executed or validly entered into by Tenant, or any other circumstance which might now or hereafter or otherwise constitute a legal or equitable discharge or defense of a guarantor or of Guarantor. Guarantor hereby covenants and agrees with Landlord that if a default shall at any time occur in the payment of any rent or additional rent, Guarantor shall and will forthwith upon demand pay such rent and additional rent, and any arrears thereof to Landlord in legal currency of the United States of America for payment of public and private debts.

2. This Guaranty is an absolute, unconditional and irrevocable guaranty of payment and of performance (and not merely of collection). If Tenant shall default in the payment or performance of any of the Obligations, Guarantor shall, upon demand,

pay or perform the same in place of Tenant.

3. Guarantor hereby expressly agrees that this Guaranty shall be a continuing guaranty and that the validity of this Guaranty and the obligations and liability of Guarantor hereunder shall in no way be terminated, affected, diminished or impaired by reason of (a) the assertion of or the failure of Landlord to assert against Tenant any of the rights or remedies reserved to Landlord pursuant to the terms, covenants and conditions of the Lease or (b) any assignment of the Lease, or (c) subletting by Tenant of all or any portion of the Premises or (d) any renewal or extension of the Lease or any modification or amendment thereof, whether pursuant to the Lease or by subsequent agreement of Landlord and Tenant, or (e) any extension of time that may be granted by Landlord to Tenant, or (f) any consent, inaction or omission under or in respect of the Lease, or (g) any dealings or transaction or matter or thing occurring between Landlord and Tenant or (h) any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Tenant or Tenant's successors or assigns whether or not notice thereof is given to Guarantor, or (i) any impairment of the Obligations by law, order of any court or otherwise, or (j) Landlord's receipt or applications of any security given for the payment or performance of the Obligations, or any matter or thing whatsoever, whether or not specifically mentioned herein, other than full payment and performance of all Tenant's Obligations under the Lease.

4. No failure or delay on the part of Landlord in exercising any right, power or privilege under this Guaranty shall operate as a waiver of or otherwise affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

5. Guarantor agrees that whenever at any time or from time to time Guarantor shall make any payment to Landlord or perform or fulfill any term, covenant, or condition hereunder on account of the liability of Guarantor hereunder, Guarantor will notify Landlord in writing that such payment is for such purpose. No such payment by Guarantor pursuant to any provision hereof shall entitle Guarantor, by subrogation or otherwise, to any payment from Tenant or out of any of the property of Tenant by setoff, lien or otherwise, and Guarantor does hereby waive any and all claims and rights by law or contract, however arising, of subrogation, setoff, reimbursement, contribution, exoneration or indemnity (or any similar right) from and against Tenant or any affiliated entity of Tenant arising out of or in connection with the Obligations, this Guaranty or any said payments of Guarantor required hereunder. Said waiver of Guarantor shall terminate on a date (the "Termination Date. Until Tenant's Obligations to Landlord are satisfied or discharged, Guarantor does hereby and shall be deemed to subordinate any present or future claims of Guarantor against Tenant, or any firm, person, corporation or entity controlled by, controlling or under common control with Tenant, to the payment and performance of Tenant's Obligations to Landlord and Guarantor shall not receive or retain any payment or thing of value as payment for such claims including any security therefor.

6. Guarantor agrees that it will, at any time and from time to time, within ten (10)

business days following written request by Landlord, execute, acknowledge and deliver to Landlord, a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications). Guarantor agrees that such certificates may be relied on by anyone holding or proposing to acquire any interest in the building in which the Premises are located from or through Landlord or by the holder of any mortgage or superior lease.

7. The Guarantor represents and warrants to Landlord as follows:

7.1 The execution, delivery and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action.

7.2 Guarantor is not in default in the terms and conditions of any agreement to which it is a party or by which it is bound, such as would materially or adversely affect its ability to carry out the terms, covenants and conditions of this Guaranty.

7.3 Guarantor has the full power, authority and legal right to execute and deliver, and to perform and observe the provisions of this Guaranty including the payment and performance of all Obligations. This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms except as enforcement thereof may be limited due to (a) bankruptcy, insolvency, moratorium, reorganization of other similar laws effecting creditors' rights generally or (b) the non-availability of equitable remedies which are discretionary with the courts.

7.4 Guarantor is not in violation of any decree, ruling, judgment, order or injunction applicable to it, nor any law, ordinance, rule or regulation of whatever nature which when taken alone or in the aggregate, would materially and adversely affect its ability to carry out any of the terms, covenants, and conditions of this Guaranty or would impair Landlord's rights to receive the benefits hereunder. There are no actions, proceedings or investigations pending or threatened against or affecting Guarantor (or any basis therefor known to Guarantor) before or by any court, arbitrator, administrative agency or other governmental authority or entity, which when taken alone or in the aggregate, if adversely decided, would materially or adversely affect its ability to carry out any of the terms covenants and conditions of this Guaranty or would impair Landlord's rights to receive the benefits hereunder.

7.5 Neither the execution or delivery of this Guaranty, nor the consummation of the transactions herein contemplated, nor the compliance with the terms and provisions hereof, conflict or will conflict with or result in a breach of any terms, conditions, or provisions of the Certificate of Incorporation, By-Laws or similar documents of Guarantor or of any law, order, writ, injunction or decree of any court or governmental authority, or of any agreement or instrument to which Guarantor is a party or by which it is bound, or constitutes or will constitute a default thereunder.

8. It is a condition of the granting, execution and delivery of the Lease that

Guarantor execute and deliver this Guaranty and Guarantor deems the granting, execution and delivery of the Lease to be in Guarantor's best interest and as owner of all of Tenant's issued and outstanding stock, Guarantor expects to derive benefit therefrom. The obligations and liabilities of Guarantor under this Guaranty shall not be subject to or impaired by any counterclaim, set-off, deduction or defense based upon any claim Guarantor may have against Landlord.

9. All defined terms used in this Guaranty which are defined in the Lease shall have the meaning ascribed to such terms in the Lease. This Guaranty shall continue in full force and effect so long as any of the Obligations remains unpaid or unperformed (whether or not the Lease shall have terminated).

10. If any provision of the Guaranty or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Guaranty or the application of such provision to persons or circumstances other than those as to which it is held void, unenforceable or invalid shall not be affected thereby and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

11. As further inducement to Landlord to make and enter into the Lease and in consideration thereof, Guarantor hereby waives trial by jury and the right thereto in any action or proceeding of any kind or nature, arising, on, under or by reason of or relating to, this Guaranty or any agreement collateral hereto.

IN WITNESS WHEREOF, Guarantor and Tenant (for the purpose of accepting Agent's obligations) have duly executed this Guaranty as of the day and year first above written.

GUARANTOR

By: _____
President

Landlord's Form of Limited Good Guy Guarantee (Exhibit "B")

LIMITED GUARANTY

The undersigned, _____ ("Guarantor"), as additional consideration for _____ CORP. ("Owner") entering into a lease dated as of February 1, 2009 ("Lease") with _____, LLC ("Tenant") with respect to premises located at _____ Street, New York, New York, as more fully described in the Lease ("Premises"), hereby personally guarantees to Owner the payment of all Fixed Minimum Rent and additional rent and other charges due and obligations of Tenant to Owner under the Lease which accrue up to and until the date on which the Premises are vacated and the keys and possession of the Premises are turned over and surrendered to Owner and are available for re-renting; provided, however, that Tenant has given Owner thirty (30) days' prior written notice of the date on which the Premises will be so vacated and that all items of repair and maintenance of the Premises under the Lease to be performed by Tenant have been performed. Guarantor hereby agrees that any repair and maintenance necessary to be performed to the Premises due to the willful misconduct or gross negligence of Tenant shall be performed by the Guarantor, prior to the vacating of the Premises by Tenant.

In addition, should the term of the Lease end by virtue of the Tenant's default, the Tenant's personal property, and any and all property which the Tenant has permitted to be brought upon the Premises or installed in the Premises, which may be required to be removed at the expiration or termination of Tenant's occupancy in accordance with the terms of the Lease, shall be removed by Tenant at or prior to such termination and, if not so removed, the undersigned Guarantor agrees to reimburse Owner for any and all expenses in connection therewith, and to hold the Owner harmless from any claims or liability in connection with such removal. This Guaranty shall not include a guarantee of the obligation of the Tenant to replace any item beyond repair other than plate glass, but shall include such guarantee of replacement in the event that such replacement is necessitated by the acts or omissions of Tenant, its agents, employees or invitees, or by failure of Tenant to make timely repairs.

Guarantor has executed this Guaranty knowing that Owner will rely upon the same in entering into the Lease.

Guarantor further understands and agrees that:

1. Owner may (but is not obligated to) first look to Guarantor for any Fixed Minimum Rent, additional rent, or other guaranteed obligations of Tenant, before applying any security monies held under the Lease. In such event, Guarantor will be obligated to pay to Owner any Fixed Minimum Rent and/or additional rent, and to perform any of the above obligations prior to Owner's applying any security held under the Lease.

2. Guarantor, at Owner's option, may be joined in any action or proceeding commenced by Owner against Tenant in connection with and based upon any covenants and obligations in the Lease, which have been guaranteed by Guarantor, and that Guarantor hereby waives any demand by Owner and/or prior action by Owner of any nature whatsoever against Tenant.
3. This Guaranty shall remain and continue in full force and effect notwithstanding the amendment or modification of the Lease by the parties thereto whether prior to or subsequent to the execution hereof and as to any renewal, extension, modification or amendment of the Lease and as to any assignment of Tenant's interest in the Lease, and Guarantor does hereby waive notice of any of the foregoing and agrees that the liability of Guarantor hereunder shall not be discharged, in whole or in part thereby, and shall be based upon the obligations set forth in the Lease as the same may be renewed, extended, modified, amended, or assigned. In the event of change of control of Tenant not allowed pursuant to the terms of the Lease, Guarantor shall be unconditionally obligated to pay and perform all obligations under the Lease for the term thereof until a substitute Guaranty is provided to Landlord in form and from a guarantor absolutely acceptable to Landlord in Landlord's sole judgment.
4. Guarantor's obligations hereunder shall remain fully binding although Owner may have waived one or more defaults by Tenant, extended the time of performance by Tenant, released, or returned other collateral given later as additional security (including other guarantees) and released Tenant from the performance of its obligations under the Lease.
5. This Guaranty shall remain in full force and effect notwithstanding the institution by or against Tenant of bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or the rejection or disaffirmance of the Lease in any such proceedings or otherwise. This Guaranty shall be secured by a security deposit of \$_____ to be held _____.
6. If this Guaranty is signed by more than one party, their obligations shall be joint and several and the release of one of such guarantors shall not release any other of such guarantors.
7. This Guaranty shall be applicable to and binding upon the heirs, representatives, successors and assigns of Guarantor, and it shall accrue to the benefit of the representatives, successors and assigns of Owner.
8. This Guaranty shall be governed by and interpreted in accordance with the laws of the State of New York. Guarantor agrees to submit to the jurisdiction of the State of New York.

IN WITNESS WHEREOF, this Guaranty has been executed by Guarantor this _____ day of _____, 2009.

GUARANTOR:

Name: _____

Social Security Number:

Address: _____

STATE OF NEW YORK)
COUNTY OF) ss.:

On the _____ day of _____ in the year 2009 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies), and that by his/her signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

Notary Public

Tenant's Form of "more" Limited Good Guy Guarantee (Exhibit "C")

LIMITED GUARANTY

The undersigned, _____ ("Guarantor"), as additional consideration for _____ CORP. ("Owner") entering into a lease dated as of July __, 2009 ("Lease") with _____, LLC ("Tenant") with respect to premises located at _____, New York, New York, as more fully described in the Lease ("Premises"), hereby personally guarantees to Owner the payment of all Fixed Minimum Rent and additional rent and other charges due to Owner under the Lease which accrue after default and termination of the Lease applicable to and allocable monthly for the holdover period up to and until the date on which the Premises are vacated and possession of the Premises are turned over and surrendered to Owner and are available for re-renting; provided, however, that Tenant has given Owner thirty (30) days' prior written notice of the date on which the Premises will be so vacated and that all items of repair and maintenance of the Premises under the Lease to be performed by Tenant have been performed or will be reimbursed as part of the amount of this Guaranty. Guarantor hereby agrees that any repair and maintenance necessary to be performed to the Premises due to the willful misconduct or gross negligence of Tenant shall be performed by the Guarantor, prior to the vacating of the Premises by Tenant or defrayed as part of the amount of this Guaranty. Irrespective of any acceleration of rentals and additional rentals for the balance of the original term of the Lease resulting from termination of the Lease, Guarantor's obligations with respect to such "rentals and additional rentals" shall be only to the amounts of "rentals and additional rentals" allocable to the holdover period until the Premises is surrendered, plus the stated other and additional obligations set forth in this Limited Guaranty.

In addition, should the term of the Lease end by virtue of the Tenant's default, the Tenant's personal property, and any and all property which the Tenant has permitted to be brought upon the Premises or installed in the Premises, which may be required to be removed at the expiration or termination of Tenant's occupancy in accordance with the terms of the Lease, shall be removed by Tenant at or prior to such termination and, if not so removed, the undersigned Guarantor agrees to reimburse Owner for any and all expenses in connection therewith, and to hold the Owner harmless from any claims or liability in connection with such removal. This Guaranty shall not include a guarantee of the obligation of the Tenant to replace any item beyond repair other than plate glass, but shall include such guarantee of replacement in the event that such replacement is necessitated by the acts or omissions of Tenant, its agents, employees or invitees, or by failure of Tenant to make timely repairs.

Guarantor has executed this Guaranty knowing that Owner will rely upon the same in entering into the Lease.

Guarantor further understands and agrees that:

1. Guarantor, at Owner's option, may be joined in any action or proceeding commenced by Owner against Tenant in connection with and based upon any covenants and obligations in the Lease, which have been guaranteed by Guarantor, and that Guarantor hereby waives any demand by Owner and/or prior action by Owner of any nature whatsoever against Tenant.
2. This Guaranty shall remain and continue in full force and effect notwithstanding the amendment or modification of the Lease by the parties thereto whether prior to or subsequent to the execution hereof and as to any renewal, extension, modification or amendment of the Lease, and Guarantor does hereby waive notice of any of the foregoing and agrees that the liability of Guarantor hereunder shall not be discharged, in whole or in part thereby, and shall be based upon the obligations set forth in the Lease as the same may be renewed, extended, modified or amended.
3. Guarantor's obligations hereunder shall remain fully binding although Owner may have waived one or more defaults by Tenant, extended the time of performance by Tenant, released, or returned other collateral given later as additional security (including other guarantees) and released Tenant from the performance of its obligations under the Lease.
4. This Guaranty shall remain in full force and effect notwithstanding the institution by or against Tenant of bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or the rejection or disaffirmance of the Lease in any such proceedings or otherwise.
5. If this Guaranty is signed by more than one party, their obligations shall be joint and several and the release of one of such guarantors shall not release any other of such guarantors.
6. This Guaranty shall be governed by and interpreted in accordance with the laws of the State of New York. Guarantor agrees to submit to the jurisdiction of the State of New York.

IN WITNESS WHEREOF, this Guaranty has been executed by Guarantor this _____ day of _____, 2009.

GUARANTOR:

Name:

Social Security Number:

Address: _____

STATE OF NEW YORK)
COUNTY OF) ss.:

On the _____ day of _____ in the year 2009 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies), and that by his/her signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

Notary Public