

**CDBG PIGGYBACK PROGRAM  
OPERATING DEFICIT GUARANTY**

**THIS OPERATING DEFICIT GUARANTY** (this “**Guaranty**”) is made and entered into as of \_\_\_\_\_, 2006, by \_\_\_\_\_, a \_\_\_\_\_ (“**Borrower**”), and \_\_\_\_\_, a \_\_\_\_\_ (each individually, referred to as an “**Guarantor**” and collectively referred to as the “**Guarantors**”) to and for the benefit of the **STATE OF LOUISIANA, DIVISION OF ADMINISTRATION, OFFICE OF COMMUNITY DEVELOPMENT (“OCD”)**.

**PRELIMINARY RECITALS:**

**A. WHEREAS**, OCD has agreed to (1) make a gap financing loan (the “**Loan**”) to Borrower and/or (2) grant project based rental assistance (“**PBRA**”) to finance the development, rehabilitation, replacement, restoration, construction and/or operation of a multifamily residential rental project, on certain immovable property in \_\_\_\_\_ Parish, Louisiana, (the “**Land**”) more fully described on **Exhibit A – Property Description** attached hereto (the “**Project**”), under and pursuant to that certain Award Acceptance Agreement dated \_\_\_\_\_, 200\_\_\_\_ (the “**Award Agreement**”); and

**B. WHEREAS**, to evidence any (i) Loan, Borrower and OCD have entered into a Gap Financing Loan Agreement (“**Loan Agreement**”), and/or any (ii) PBRA, Borrower and OCD have entered into a PBRA contract (“**PBRA Contract**”); and

**C. WHEREAS**, Guarantor is a Key Principal of Borrower and will derive material financial benefit from the Loan and/or the PBRA; and

**D. WHEREAS**, OCD has relied on the statements and agreements contained herein in agreeing to make the Loan and/or grant the PBRA. The execution and delivery of this Guaranty by Guarantor is a condition precedent to the making of the Loan and granting the PBRA by OCD,

**NOW, THEREFORE**, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Preliminary Recitals, which Preliminary Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenants and agrees for the benefit of OCD and its respective successors, indorsees, transferees, participants and assigns as follows:

**SECTION I  
DEFINITIONS**

**1.1 Definitions.** Except as otherwise defined in this Article 1.1, capitalized terms used but not defined herein shall have the meanings assigned to them in the Loan Agreement, PBRA Contract or Award Agreement, as applicable. The following terms shall have the meanings ascribed thereto as set forth below:

(a) “**Default Interest Rate**”: the lesser of (i) the maximum rate allowed by law, or (ii) 18% per annum.

(b) **“Project Expenses”**: all cash costs and cash expenses of every kind and character which the Borrower incurs in connection with the operation of the Project (excluding principal and interest due and payable under the Loan and those expenses previously accrued, but including capital expenditures other than those paid for out of replacement reserves), and amounts required by OCD to be allocated to any reserve account, and all operating expenses of the Project that must be accrued monthly (including property taxes and insurance premiums based upon the completed Project full assessed value).

(c) **“Guaranteed Obligations”**: each and every obligation of the Guarantors under and pursuant to this Guaranty, including, without limitation, the obligations specified in Article 3 hereof.

(d) **“Guaranty Period”**: the period commencing on the first day of the first full fiscal year of the Borrower following completion of construction of the Project and ending until the Project has generated positive Surplus Cash for two (2) consecutive fiscal years. Provided, however, if the Guarantor is an organization exempt from payment of federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (**“Code”**), as an entity organized under Section 501(c)(3) of the Code, the Guarantor’s obligations under the Guaranty shall (i) not extend more than five (5) years from the date that the Project first achieves “break-even operations”, and (ii) be capped at an amount equal to “six (6) months” of Project Expenses. For purposes of this section, “break-even operations” mean the date upon which (i) the Project achieves 95 percent occupancy, and (ii) the revenues received from the normal operation of the Project equal all accumulated operational costs of the Project for a period of three (3) consecutive months after completion of construction computed on a cash basis and in accordance with the Loan Documents.

(e) **“Net Operating Income”**: means for any fixed period, the gross cash receipts of the Borrower from the operation of the Project (excluding any extraordinary transactions) for such period (other than capital contributions, the proceeds of the Loan, and any casualty insurance proceeds that will be used to repair or replace the Improvements) (collectively, (**“Project Revenues”**)), less Project Expenses.

(f) **“Operating Deficit”**: for any relevant period, the excess of Project Expenses (or a portion thereof) plus the payment of principal and interest due and payable on the Loan over the Borrower’s cash revenues of every kind from the Borrower’s operation of the Project for such fiscal period (excluding extraordinary cash proceeds and capital contributions, and excluding amounts drawn from a reserve account).

(g) **“Surplus Cash”** means any cash (excluding tenant security deposits) remaining at the end of each fiscal year of the Borrower after: (1) Payment of all operating expenses for the Project for such fiscal year; (2) payment of all sums due or currently required to be paid under the terms of any Permanent Loan Mortgage encumbering the Project and the promissory note secured by such Permanent Loan Mortgage; and (C) Payment of all amounts required to be deposited into any reserve fund for the payment of operating expenses, any reserve for replacements to the Project, or any other special reserve funds required to be maintained by the Project under the Permanent Loan Mortgage or the Loan Documents.

## ARTICLE 2 REPRESENTATIONS AND WARRANTIES

The Guarantors make the following representations and warranties which shall be continuing representations and warranties until this Guaranty terminates in accordance with the provisions contained herein:

**2.1 Existence and Rights.** Each Guarantor is a person of sound mind and body or an entity duly organized under the laws of the State of Louisiana without limitation as to the duration of its existence and is in good standing thereunder. Each Guarantor has powers and adequate authority, rights and franchises to own its property and to carry on its business as now owned and carried on, and is duly qualified and in good standing in each jurisdiction in which the property owned by it or the business conducted by it makes such qualification necessary, including without limitation, the State of Louisiana, and each Guarantor has the power and adequate authority to make and carry out this Guaranty.

**2.2 Guaranty Authorized and Binding.** The execution, delivery and performance of this Guaranty is duly authorized and does not require the consent or approval of any governmental body or other regulatory authority; is not in contravention of, or in conflict with, any law or regulation or any term or provision of the organizational documents of the Guarantors; and this Guaranty is a valid and legally binding obligation of each Guarantor enforceable in accordance with its terms.

**2.3 No Conflict.** The execution and delivery of this Guaranty is not, and the performance of this Guaranty will not be, in contravention of, or in conflict with, any agreement, indenture or undertaking to which any Guarantor is a party or by which any Guarantor or any of the Guarantor's property is or may be bound or affected and does not, and will not, cause any security interest, lien or other encumbrance to be created or imposed upon any such property.

**2.4 Litigation.** Except as otherwise disclosed to OCD in writing, there is no litigation or other proceeding pending or, to the best of any Guarantors' knowledge, threatened against, or affecting, any Guarantor or the Guarantors' properties which, if determined adversely to any Guarantor, would have a materially adverse effect on the financial condition, properties, businesses or operations of any Guarantor, or which prevents or interferes with or adversely affects any Guarantor's entering into this Guaranty or the validity of this Guaranty or the carrying out of the terms hereof and no Guarantor is in default with respect to any order, writ, injunction, decree or demand of any court or other governmental or regulatory authority.

**2.5 Financial Condition.** Each Guarantor's financial statements, which have heretofore been submitted in writing by the Guarantor to OCD or OCD's credit underwriter in connection herewith, are true and correct in all material respects as of the date thereof, and fairly present the financial condition of the Guarantor for the period covered thereby. Since the date of said financial statements, there has been no materially adverse change in the Guarantor's financial condition. The Guarantors have no knowledge of any liabilities, contingent or otherwise, as of the date of their respective financial statements (and as of the date hereof) which are not reflected in said financial statements; and, other than in the ordinary course of any Guarantor's business, the Guarantors have not entered into any commitments or contracts which are not reflected in its financial statements or which may have a materially adverse effect upon any Guarantor's financial condition, operations or business as now conducted.

**2.6 Solvency.** The Guarantors are not Insolvent (defined below) as of the date hereof and the execution and delivery of this Guaranty will not (a) render any Guarantor insolvent under generally accepted accounting principles nor render any Guarantor Insolvent, (b) leave any Guarantor with remaining assets which constitute unreasonably small capital given the nature of the Guarantor's business, and (c) result in the incurrence of Debts (defined below) beyond the Guarantor's ability to pay them when and as they mature. For the purposes of this Section, "**Insolvent**" means that the present fair salable value of assets is less than the amount that will be required to pay the probable liability on existing Debts as they become absolute and matured. For the purposes of this Section, "**Debts**" includes any legal liability for indebtedness, whether matured or unmatured, liquidated or unliquidated, absolute or fixed.

**2.7 Financial or Other Benefit or Advantage.** Each Guarantor hereby acknowledges and warrants that each Guarantor has derived or expects to derive a financial or other benefit from the Project.

### **ARTICLE 3 AGREEMENTS AND GUARANTEED OBLIGATIONS**

**3.1 Operating Deficits Guaranty.** Each Guarantor hereby covenants and agrees solidarily to advance, on the terms set forth below, the funds required to fund any and all Operating Deficits incurred by the Borrower during the Guaranty Period, within 120 days following the end of each fiscal year during the Guaranty Term. If the Borrower anticipates the need to request any Guarantor to make a payment under this Guaranty to fund an Operating Deficit, the Borrower will promptly notify the Guarantors, in writing, with a copy to OCD of the amount of such Operating Deficit (with sufficient supporting documentation to evidence the need to make a payment under this Guaranty). Prior to expiration of the 120-day period, the Guarantors shall promptly provide the Borrower with funds sufficient to pay the amount of such Operating Deficit and promptly upon receipt of such funds, the Borrower shall pay the Project Expenses causing such Operating Deficit. Notwithstanding the foregoing, OCD may submit a request directly to the Guarantors (with a copy of such request to OCD), on behalf of the Borrower, to make a payment under this Guaranty upon making a determination of the existence of an Operating Deficit.

Failure of the Borrower to provide such a request and/or notice to OCD or the failure of any Guarantor to pay such Operating Deficit, shall neither impair nor reduce the Guarantors' obligation to pay the amounts due hereunder upon direct demand by OCD. Upon approval of such request of the Borrower by OCD, and payment of such Operating Deficit by the Guarantors, the same shall be credited towards the amounts due by Guarantors under this Guaranty.

The Operating Deficit Guaranty shall terminate upon the expiration of the Guaranty Period, as approved in writing by OCD; this termination does not, in any way, relieve or affect the Guarantors' obligations under this Guaranty arising prior to the expiration of the Guaranty Period, under any completion guaranty or under any other indemnity or guaranty agreement.

**3.2 Nature of Guaranteed Obligations.** This is a guaranty of payment and performance and not of collection only, and the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances.

**3.3 Third Party Beneficiary.** The parties hereto acknowledge that OCD is entitled to enforce this Guaranty directly against the Guarantors at any time. OCD is also entitled to enforce any security agreements additional guaranties or other collateral now or hereafter securing this Guaranty at any time against the person or entity providing such security.

**3.4 Further Assurances.** The Guarantors will, at their expense, execute, acknowledge and deliver all such further documentation, instruments and assurances and the like and take all such further action as OCD shall reasonably require in order to carry out the intentions or facilitate the provisions of this Guaranty.

**3.5 Obligations Absolute.** The Guaranteed Obligations shall remain in full force and effect without regard to, and shall not be affected or impaired by the following, any of which may be taken without the consent of, or notice to, the Guarantors, nor shall any of the following give any Guarantor any recourse or right of action against OCD:

(a) Any delay, exercise or non-exercise by OCD of any right or privilege under this Guaranty;

(b) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Guarantors (which term shall include any other party at any time directly or contingently liable for any of the Operating Deficit Guaranty) or any affiliate of the Guarantors, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantors shall have had notice or knowledge of any of the foregoing;

(c) Any assignment or other transfer of this Guaranty in whole or in part;

(d) Any acceptance of partial funding of the Operating Deficit Guaranty;

(e) Any release or discharge of the Borrower or any general partner from any of its obligations; and

(f) Any subordination, compromise or release of any or all of the property or other collateral, if any, securing the Guarantors' obligations under this Guaranty, or any substitution with respect thereto.

**3.6 Waivers.** Each Guarantor unconditionally waives any defense to the enforcement of this Guaranty other than payment or performance, including, without limitation:

(a) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty;

(b) Any right to require OCD to proceed against the Borrower or any other guarantor at any time, or to proceed against or exhaust any security held by OCD at any time, or to pursue any other remedy whatsoever at any time;

(c) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Borrower or the Guarantors or any affiliate of the Borrower or the Guarantors or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantor shall have had notice or knowledge of any of the foregoing;

(d) Any right any Guarantor might have, under Louisiana law, to revoke this Guaranty, it being the intention of the Guarantors that this Guaranty remain in full force and effect until termination, as provided herein;

(e) Any defense based upon an election of remedies by OCD, including, without limitation, any remedies which destroy or impair the subrogation rights of any Guarantor to the Borrower or any general partner for reimbursement or both;

(f) Any duty of OCD to advise the Guarantors of any information known to OCD regarding the financial condition of the Borrower or any general partner or managing member and all other circumstances affecting the ability of the Borrower or any general partner or managing member to perform its obligations to OCD, it being agreed that each Guarantor assumes the responsibility for being and keeping informed regarding such conditions or any such circumstances; and

**3.6 Subrogation.** Notwithstanding any other provision of this Guaranty to the contrary, until all obligations in favor of OCD hereunder shall have been paid or performed in full, each Guarantor

hereby waives any claim or other rights which the Guarantor may now have or hereafter acquire against any other guarantor of all or any of the obligations of any Guarantor under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification, any right to participate in any claim or remedy of OCD against the Borrower, any general partner or managing member or any Guarantor or any collateral which OCD now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from the Borrower, any general partner or any Guarantor, directly or indirectly, in cash or other property or by set off or in any other manner, payment or security on account of such claim or other rights.

**3.7 Additional Waivers.** The Guarantors shall not be released or discharged, either in whole or in part, by OCD's failure or delay to (a) perfect or continue the perfection of any lien or security interest in any collateral which secures the obligations of the Borrower, or (b) protect the property covered by such lien or security interest.

**3.8 Dealings with Parties.** OCD shall have complete discretion, without giving notice to or obtaining the consent of the Guarantors, the Borrower and each other person or entity who now is or after the date hereof becomes liable in any manner for any of the guaranteed obligations, in such manner as OCD shall decide, and accordingly each Guarantor grants to OCD full authority, in its sole discretion, whether before or after termination of this Guaranty, to do any and all of the following, without limiting the generality of the foregoing: extend credit, make loans and afford such financial accommodation to the Borrower or any general partner at such times, in such amounts and on such terms as OCD may approve; vary the terms or alter, compromise, accelerate and grant extensions or renewals of time or manner of payment of any present or future obligations under this Guaranty, assign or transfer this Guaranty or any other instrument evidencing or securing the obligations under this Guaranty in whole or in part; vary, exchange, release or discharge, wholly or partially the Borrower or any general partner or any other guarantor or obligor of the obligations under this Guaranty, and compromise or make any settlement or other arrangement with the Borrower, any general partner and/or managing member and/or any other guarantor, and if the obligations under this Guaranty are now or hereafter secured, exchange, substitute or release in part or in full all of the security given for the payment and performance of any of the Guarantors' obligations under this Guaranty.

**3.9 Bankruptcy No Discharge; Repayments.** So long as any of the guaranteed obligations shall be owing to OCD, the Guarantors shall not, without the prior written consent of OCD, as applicable, commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against the Borrower or any general partner. Each Guarantor understands and acknowledges that by virtue of this Guaranty, the Guarantor has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect the Borrower and any general partner. As an example and not in any way of limitation, a subsequent modification of the guaranteed obligations in any reorganization case concerning the Borrower or any general partner shall not affect the obligation of the Guarantor to pay and perform the guaranteed obligations in accordance with their respective original terms. If a claim is ever made upon OCD for repayment of any amount or amounts received by OCD in payment of the obligations under this Guaranty (whether or not all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by OCD) and OCD repays all or any part of said amount, then, notwithstanding any revocation or termination of this Guaranty or the cancellation of any other instrument evidencing the guaranteed obligations, each Guarantor shall be and remain liable to OCD for the amount so repaid by OCD, to the same extent as if such amount had never originally been received by OCD.

**3.10 Subordination.** So long as any of the guaranteed obligations remain unpaid or undischarged, each Guarantor agrees that any and all claims it may have against the Borrower or any

general partner shall be and hereby are subordinated to the guaranteed obligations and all other claims of OCD against the Borrower or any general partner or managing member. Any indebtedness of the Borrower or any general partner or an managing member to any Guarantor shall be collected and received by the Guarantor as trustee for OCD and be paid over to OCD on account of the indebtedness of the Guarantor to OCD, upon demand by OCD. Notwithstanding the foregoing, so long as no Event of Default shall exist hereunder or under any of the Loan Documents, and no event has occurred which with the passage of time or the giving of notice would constitute a default hereunder or under any of the Loan Documents, each Guarantor and/or its affiliates shall be entitled to receive any fees or other payments specifically provided for in the Borrower's partnership agreement or limited liability company agreement.

**3.11 Independent and Separate Obligations.** The obligations of each Guarantor hereunder are independent of any obligation of the Borrower or any general partner or managing member, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any Guarantor whether or not the Guarantor is the alter ego of the Borrower, any general partner, any managing member, or any other guarantor. OCD's rights hereunder shall not be exhausted until the conditions to termination in Section 4.6 below have been satisfied.

**3.12 Setoff.** OCD shall have a right of setoff against, and each Guarantor hereby grants a security interest in, all moneys, securities and other property of the Guarantor now or hereafter in the possession of OCD. Such right is in addition to any right of setoff OCD may have by law. All rights of setoff may be exercised without notice or demand to the Guarantor. No right of setoff shall be deemed to have been waived by any act or conduct on the part of OCD, or by any neglect to exercise such right of setoff, or by any delay in doing so. Every right of setoff shall continue in full force and effect until specifically waived or released by an instrument in writing executed by OCD.

**3.13 Payments.** The Guarantors shall not be credited for the funding of any of the Guaranteed Obligations payable to OCD unless the required payment is received by OCD in immediately available funds and is made by such Guarantor after a demand made by OCD pursuant to this Guaranty. Each Guarantor agrees that whenever the Guarantor shall pay any amount to OCD hereunder on account of the liability hereunder, the Guarantor will deliver such payment to OCD at the address provided in Section 4.1 below and notify OCD in writing that such payment is made under this Guaranty for such purpose, with a copy to OCD of such evidence of payment and notice.

**3.14 Financial Statements.** Each Guarantor covenants and agrees to provide OCD, on or before May 31 of each year, with financial statements (audited, if available), including a balance sheet, an income statement, a statement of changes in financial position and such other statements as may be required by OCD, prepared in accordance with generally accepted accounting practices consistently applied and certified as true and complete in all material respects by the Guarantor or an officer of the Guarantor or, if required by OCD, a certified public accountant acceptable to OCD. Each Guarantor further covenants and agrees to immediately notify OCD of any material adverse change in the Guarantor's financial condition.

**3.15 Governing Law/Consent to Jurisdiction.** This Guaranty shall be governed by and construed in accordance with the laws of the State of Louisiana applicable to contracts entered into and entirely to be performed therein. Each Guarantor hereby irrevocably submits and consents to the jurisdiction of the courts of the State of Louisiana and of the United States District Court for the district in which the Project is located in connection with any action, suit or other proceeding arising out of or relating to this Guaranty or any action taken or omitted hereunder, and waives personal service of any summons, complaint or other process and agrees that the service thereof may be made by certified or registered mail directed to the Guarantor at the address for purposes of notices hereunder. If any Guarantor, so served, should fail to appear or answer within the time prescribed by law, then the

Guarantor shall be deemed in default and judgment may be entered against the Guarantor for the amount or other relief as demanded in any summons, complaint or other process so served. Each Guarantor agrees that a final judgment in any such action, suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

#### **ARTICLE 4 MISCELLANEOUS**

**4.1 Notices.** All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; (b) national express air courier, provided such courier maintains written verification of actual delivery; or (c) facsimile. Any notice or other communication given by the means described in subsection (a) or (b) above shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent. Any notice or other communication given by the means described in subsection (c) above shall be deemed effective the date on which the facsimile transmission occurs or if such date is not a business day on the business day immediately following the date on which the facsimile transmission occurs.

OCD:

with a copy to:

Guarantors:

with a copy to:

**4.2 Expenses.** The Guarantors agree to pay all costs and expenses, including reasonable legal fees, which may be incurred by OCD in any effort to collect or enforce any of the obligations of any Guarantor hereunder, whether or not any lawsuit is filed, including, without limitation, all costs and legal fees incurred by OCD in any bankruptcy proceeding (including, without limitation, any action for relief from the automatic stay of any bankruptcy proceeding) and in any judicial or nonjudicial foreclosure action.

**4.3 Amendments; Successors.** Neither this Guaranty nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought, subject to the prior written consent of OCD. All of the terms of this Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Guarantors shall not have the right to assign any of the Guarantor's rights or obligations under this Guaranty. All remedies of OCD are cumulative. When the context in which the words are used in this Guaranty indicates that such is the intent, words in the singular number shall include the plural and vice-versa. If any one or more of the provisions of this Guaranty should be determined to be illegal or unenforceable, all other provisions shall remain effective. No delay or failure by OCD to exercise any remedy against any Guarantor will be construed as a waiver of that right or remedy. If more than one person or entity executes this Guaranty as a Guarantor, the obligations hereunder shall be joint and several.

**4.4 Assignability by OCD.** OCD may, at any time and from time to time, assign, conditionally or otherwise, all of the rights of OCD under this Guaranty, whereupon such assignee shall

succeed to all rights of OCD hereunder. OCD may, at any time and from time to time, assign, conditionally or otherwise, all of the rights of OCD under this Guaranty, whereupon such assignee shall succeed to all rights of OCD hereunder to the extent that such rights may be assigned to it. OCD may give written notice to the Guarantors of any such assignment, but any failure to give, or delay in giving, such notice shall not affect the validity or enforceability of any such assignment.

**4.5 Demands.** Each demand by OCD for performance or payment hereunder shall be in writing and shall be made in the manner set forth in Section 4.1. Interest shall accrue at the Default Interest Rate on all sums not paid by the Guarantor to OCD within ten (10) days after demand.

**4.6 Term.** The obligations of the Guarantors under this Guaranty and any instrument which grants collateral to secure such obligations shall continue in full force and effect until the Guarantors have fully performed all of the guaranteed obligations and paid all other amounts payable hereunder in accordance with the terms of this Guaranty and the period of time has expired during which any payment received by OCD hereunder or any act performed by the Guarantors may be determined to be a preferential or fraudulent transfer under the United States Bankruptcy Code or other similar applicable laws.

**4.7 Complete Agreement.** This Guaranty supersedes any prior negotiations, discussions or communications between any Guarantor and OCD and constitutes the entire agreement between OCD and the Guarantors with respect to the Guaranteed Obligations.

**4.8 Counterparts.** This Guaranty may be executed in one or more counterparts, each of which taken together shall constitute one and the same instrument.

**4.9 Advice of Counsel.** The Guarantors represent and acknowledge to OCD that the Guarantors have consulted with their attorneys regarding the terms and conditions and waivers set forth in this Guaranty. The Guarantors' attorneys have advised the Guarantors of the true legal consequences of each waiver set forth in this Guaranty, including the rights the Guarantors would have in the absence of such waivers.

**4.10 Waiver of Jury Trial.** BY EXECUTING THIS GUARANTY, OCD AND THE GUARANTORS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHTS OR THE RIGHTS OF THEIR HEIRS, ASSIGNS, SUCCESSORS OR PERSONAL REPRESENTATIVES TO A TRIAL BY JURY, IF ANY, IN ANY ACTION, PROCEEDING OR SUIT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSSCLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE, BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT TO BE EXECUTED IN CONNECTION HERewith OR WITH THE INDEBTEDNESS OR THE RENEWAL, MODIFICATION OR EXTENSION OF ANY OF THE FOREGOING OR ANY FUTURE ADVANCE THEREUNDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR OCD'S EXTENDING CREDIT TO THE BORROWER AND NO WAIVER OR LIMITATION OF OCD'S RIGHTS HEREUNDER SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON OCD'S BEHALF.

Each Guarantor acknowledges that the above paragraph has been expressly bargained for by OCD as part of the Loan or the PBRA Contract and that, but for the Guarantors' agreement thereto, OCD would not have extended the Loan or the PBRA secured by this Guaranty.

**COUNTERPART SIGNATURE PAGE FOR  
OPERATING DEFICIT GUARANTY**

**IN WITNESS WHEREOF**, the Guarantors have caused this Guaranty to be executed and delivered by their duly authorized representatives as of the date first set forth above.

WITNESSES: \_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
**Parish of \_\_\_\_\_, Notary Public**  
**State of \_\_\_\_\_, State of Louisiana**  
**Notary Identification # \_\_\_\_\_**  
**My Commission \_\_\_\_\_**

**COUNTERPART SIGNATURE PAGE FOR  
OPERATING DEFICIT GUARANTY**

**IN WITNESS WHEREOF**, Borrower has caused this Guaranty to be executed and delivered by its duly authorized representatives as of the date first set forth above.

WITNESSES: \_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Parish of \_\_\_\_\_, State of Louisiana  
Notary Identification # \_\_\_\_\_  
My Commission \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE FOR  
OPERATING DEFICIT GUARANTY**

**IN WITNESS WHEREOF**, OCD has caused this Guaranty to be executed and delivered by its duly authorized representatives as of the date first set forth above.

WITNESSES:

STATE OF LOUISIANA, DIVISION  
OF ADMINISTRATION, OFFICE OF  
COMMUNITY DEVELOPMENT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Parish of \_\_\_\_\_, State of Louisiana  
Notary Identification # \_\_\_\_\_  
My Commission \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**