

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (Agreement) is made, entered into, and effective this **[date]** (Effective Date), by and between **[name]**, a _____, located and doing business at **[address]** (Borrower), **[name]**, residing at **[address]**, **[name]**, a _____, whose address is **[address]** (each a Guarantor and collectively referred to as Guarantors), and **[name]**, a _____, of _____, Attention: _____ (Bank).

RECITALS

- A. Bank, Borrower, and Guarantors are parties to, among others, the documents as set forth on attached Exhibit A, which is made a part hereof by this reference, all of which, as amended and modified from time to time, including as amended by this Agreement, are referred to collectively as the "Loan Documents." All amounts due to Bank under Note A and Note B (as defined below) and the Loan Documents, including costs and expenses, are referred to as the "Indebtedness." All duties and obligations of Borrower and Guarantors under the Loan Documents, including payment of the Indebtedness, are referred to as the "Obligations."
- B. As of **[date]**, there was owing to the Bank (1) Rs. **[amount]** in principal, Rs. **[amount]** in accrued interest and late charges, and escrow requirements of Rs. **[amount]** under the Real Estate Mortgage Note (Note A), plus accrued interest from and after **[date]**, of Rs. **[amount]** per day, and (2) Rs. **[amount]** in principal, Rs. **[amount]** in accrued interest, and Rs. **[amount]** in late charges under the Real Estate Mortgage Note (Note B), plus accrued interest from and after **[date]** of Rs. **[amount]** per day, plus (3) costs, expenses, and attorney fees as provided under the Loan Documents.

- C. Borrower requested that Bank restructure Note A and Note B as herein provided. Borrower is in default under the Loan Documents as a result of Borrower's failure to make its monthly payment due **[date]** (the Designated Defaults). As a result of the Designated Defaults, the Indebtedness is hereby deemed accelerated.
- D. Borrower and Guarantors acknowledge that (1) the Indebtedness is secured by the Collateral, and (2) the Indebtedness is guaranteed by the unlimited guaranty of each.
- E. Borrower and Guarantors reaffirm, ratify, and confirm the Loan Documents and the Obligations as valid and binding. Borrower and Guarantors acknowledge that Bank has the right, without further notice, to enforce all of its rights under the Loan Documents as a result of the Designated Defaults and acceleration of the Indebtedness.
- F. Borrower and Guarantors acknowledge that Bank has duly performed all of its obligations under the Loan Documents and that Bank has no obligation to lend or continue to lend to Borrower.
- G. Borrower and Guarantors have requested, among other things, that Bank forbear from exercising its immediate right to payment of the Indebtedness and to possession of the Collateral.

- 1. **BASED UPON THE FOREGOING RECITALS** (which are incorporated as representations, warranties, and covenants of the respective parties, as the case may be), and in consideration of the agreements of the parties herein and other good and valuable consideration, the receipt and adequacy of which is acknowledged, the parties agree, in reliance on such recitals and consideration, as follows:
- 2. **Forbearance.** Bank agrees to forbear from enforcing its rights and remedies under the Loan Documents until the earlier to occur of (Forbearance Period): (a) ____ p.m. on **[date]**, or (b) the occurrence of a Default (as defined herein) (Termination Date). Without limiting the generality of the foregoing,

until the Termination Date Bank will not (a) initiate proceedings for the collection of the Indebtedness; (b) file or join in filing an involuntary petition in bankruptcy with respect to Borrower and Guarantors or otherwise initiate or participate in similar insolvency reorganization or moratorium proceedings for the benefit of creditors of Borrower or either Guarantors; (c) repossess or sell, through judicial proceedings or otherwise, any of the Collateral; or (d) initiate proceedings to enforce the Guaranty.

3. **Modification of Loan Documents.** To induce Bank to enter into this Agreement, Borrower and Guarantors agree that the Loan Documents are hereby supplemented and modified as follows, which modifications shall supersede and prevail over any conflicting provision of the Loan Documents:

(a) **Note Modifications.**

- i) **Note A.** Note A shall be amended to provide that (A) the Due Date is hereby revised to provide that all principal, accrued interest, and other costs and expenses incurred by Bank shall be due and payable in full not later than [date] **[OPTIONAL: (B) during the term of this Agreement, Borrower shall pay to Bank monthly payments of interest only on the outstanding principal balance of Note A].**
- ii) **Note B.** Note B shall be amended to provide that (A) the Due Date revised to provide that all principal, accrued interest, and other costs and expenses incurred by Bank shall be due and payable in full not later than [date] **[OPTIONAL: (B) during the term of this Agreement, Borrower shall pay to Bank monthly payments of interest only on the outstanding principal balance of Note B].**

- (b) **Collateral Security; Cross-Default; Cross-Collateralization.** Borrower grants to Bank a continuing security interest in and mortgage lien on the

Personal Property Collateral and the Real Property Collateral, respectively (Personal Property Collateral and Real Property Collateral are sometimes collectively referred to herein as "Collateral"). Borrower and Guarantors agree that any Event of Default under any of the Indebtedness or any Loan Document constitutes an Event of Default under all of the Loan Documents without the giving of any notice. Borrower also agrees that any Event of Default under the Loan Documents will also be an Event of Default under all indebtedness of **[name]** to Bank and all indebtedness of **[name]** to Bank. Likewise, any Event of Default by **[name]** or **[name]** with respect to each of their respective obligations to Bank under existing credit facilities will also be an Event of Default hereunder.

Borrower and Guarantors agree that the Collateral constitutes collateral security for all of the Indebtedness and also for all indebtedness of **[name]** to Bank and all indebtedness of **[name]** to Bank. Likewise, all collateral pledged to Bank by **[name]** or **[name]** shall also secure the Obligations of Borrower with respect to the Indebtedness.

(c) **Reporting.** The financial reporting requirements of the Loan Documents shall remain in full force and effect. Borrower and each Guarantor shall also provide to Bank updated financial information as reasonably requested by Bank from time to time.

4. **Conditions Precedent.** Borrower and Guarantors each understand and agree that this Agreement shall not be effective and Bank shall have no obligation to forbear from exercising its rights and remedies unless and until each of the following conditions precedent has been satisfied not later than the respective dates set forth below, or waived by Bank in its sole discretion, for whose sole benefit such conditions exist, with Bank's determination as to whether they have been timely satisfied being conclusive absent manifest error:

(a) **Documents—Borrower and Guarantors.** On or before the Closing Date, Borrower and Guarantors shall have executed and delivered to Bank the following documents all in form acceptable to Bank:

- (i) this Agreement;
- (ii) an amendment to each of the Notes;
- (iii) resolutions of Borrower approving this Agreement;
- (iv) a certification by a member or manager of Borrower with the following attached thereto: (A) true and accurate copies of the Articles of Organization and Operating Agreement of Borrower and all amendments thereto and (B) a current certificate of good standing (or equivalent) for Borrower; **[and**
- (v) **OPTIONAL: other documents.]**

(b) **Forbearance.** Forbearance Agreements upon terms and conditions acceptable to Bank executed by **[name]** and **[name]**.

5. **ARBITRATION**

(a) 6.1. If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with or arising out of this Agreement, Parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement.

(b) 6.2. In the event no amicable resolution or settlement is reached within a period of fifteen (15) days from the date on which the dispute or difference arose, such dispute or difference shall be referred to a mutually acceptance single Arbitrator or, upon the failure of the Parties to agree upon a single Arbitrator, within a period of ten (10) days, each Party shall appoint one arbitrator each and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator under the provisions of the Arbitration and Conciliation Act. The arbitration proceedings shall be held in _____ and the arbitrators shall give a reasoned award. It

is agreed that the arbitrators shall also determine and make an award as to the costs of the arbitration proceedings.

(c) 6.3. Notwithstanding anything contained herein, the Parties shall have a right to institute legal proceedings to prevent any continuing breach of the provisions of this Agreement to seek an injunctive or any other specific relief.

6. MISCELLANEOUS

a. Expenses and Taxes.

- Each Party will bear their own legal, accounting and other expenses incurred by such Party in connection with the negotiation, preparation and execution of this Agreement and the documents and transactions contemplated hereby.
- The Purchaser shall be responsible for and shall pay any stamp duty and payable in connection with the transactions contemplated pursuant to this Agreement.
- The Sellers shall be responsible for and shall pay any capital gains, taxes, sales tax, income tax and similar taxes payable as a result of the consummation of the transactions contemplated in this Agreement.

7. Notices

- Any notice(s), communication(s), request(s) or instruction(s) contemplated, provided or required to be given hereunder by any Party hereto to the other shall be in writing in English, and shall be deemed sufficiently given if delivered personally; sent by facsimile transmission with confirmatory copies sent by recorded delivery service; or sent by recorded delivery services; the registered mail postage prepaid acknowledgment due;

Applicable Law.

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of India without regard to its principles of conflicts of laws. The courts at shall have exclusive jurisdiction over all disputes or differences arising out of this Agreement.

Counterparts.

This Agreement may be executed in two counterparts, each of which will be deemed to be an original, and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET AND SUBSCRIBED THEIR RESPECTIVE HANDS TO THESE PRESENTS ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN:

(Authorized Signatory)

(.....)

In the presence of:

Witness:

Name:

Address: