

## GUARANTY OF PAYMENT AND PERFORMANCE

### **CARROLL COMMONS LLC**

THIS GUARANTY OF PAYMENT AND PERFORMANCE (this "Guaranty") is made this day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_ (individually and collectively, the "Guarantors"), maintaining an address at \_\_\_\_\_, to and for the benefit of CARROLL COMMONS, LLC, a Delaware limited liability company, PO Box 991, Hockessin, DE 19707, its successors and assigns (the "Owner") as follows:

#### 1. RECITALS:

A. Lease - Owner is about to enter into a residential lease agreement (the ALease@) with \_\_\_\_\_ (ATenant@) for the rental of certain residential premises known as Carroll Court Newark, DE 19711 Unit #: \_\_\_\_\_ (the APremises@).

B. Inducement for Guaranty - Owner is unwilling to enter into the Lease with Tenant unless Guarantors guaranty the payment and the performance of each and every obligation, term, covenant, condition and agreement contained in the Lease. Guarantors desire to give such guaranty in order to induce Owner to enter into the Lease.

#### 2. GUARANTY:

A. Guaranty – For Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Guarantors, and in consideration of Owner's agreement to lease the Premises to Tenant, Guarantors hereby unconditionally and absolutely guarantee the due and punctual payment within applicable grace periods of rent, late charges, attorney=s fees and all other sums due and owing, or that may become due and owing, from Tenant, its successors and/or assigns to Owner, its successors and/or assigns under the Lease, and the due and punctual performance and observance by Tenant of any other terms, covenants and conditions of the Lease on the part of the Tenant to be kept, observed or performed whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants and conditions thereof now or at any time hereafter made or granted. All debts, liabilities and obligations hereinabove described and covered by this Guaranty are hereinafter collectively referred to as the "Obligations".

B. Enforcement of Guaranty - Owner may, in its sole discretion, exercise any right or remedy which the Owner has under this Guaranty or by law (such rights and remedies being cumulative and not alternative or exclusive) without pursuing or exhausting any right or remedy the Owner has against the Tenant, any co-tenant of the Premises, or any other person or entity, or which the Owner has with respect to any collateral for any or all of the Obligations of the Tenant or any other guaranty for any or all of the Obligations. Owner need not join the Tenant, any co-tenant of the Premises or any other person as a party in any action brought to enforce the provisions hereof; and Owner may exercise any right or remedy which it has under this Guaranty without regard to any actions or omissions of the Tenant, any co-tenant of the Premises, or any other person. In the event of a default under the Lease, after expiration of any applicable grace period therein provided, Owner shall be entitled to immediately enforce the obligations of Guarantors hereunder.

C. Guaranty Absolute - The obligations of the Guarantors hereunder shall be absolute, primary and unconditional and shall continue in full force and effect irrespective of the validity, legality or enforceability of the Lease pursuant to which any of the Obligations arise, or the existence, value or condition of any collateral for any of the Obligations, or of any other guaranty of the Obligations or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor. The Guaranty and the obligations of the Guarantors hereunder shall be irrevocable and shall not be discharged until (i) the Obligations are fully paid and satisfied, and (ii) any obligation of Owner to lease the Premises to Tenant is terminated.

D. Guaranty Not Affected - Without limiting the generality of Section C, the Guarantors hereby consent and agree that, at any time, and from time to time, without notice to the Guarantors: (i) the time, manner, place and/or terms of payment or performance of any of the Obligations, or any of the terms of the Lease, may be extended or modified; (ii) any security deposit or other collateral, or any other guaranty, for any of the Obligations may be exchanged, released, surrendered, or otherwise disposed of; (iii) any action may be taken under or in respect of the Lease in the exercise of any remedy, power or privilege therein contained or otherwise with respect thereto, or such remedy, power or privilege may be waived, omitted, or not enforced; (iv) the time for the Tenant=s performance of or compliance with any term, covenant or agreement on its part to be performed or observed under the Lease may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to; (v) the Lease, or any term thereof, may be amended or modified in any respect (including, without limitation the term and rent provisions); and (vi) the liability of the Tenant, or any Guarantor hereunder may be released, settled or compromised, all in such manner and upon such terms as Owner deems proper, without notice to or further assents from the Guarantors, and all without affecting this Guaranty or the obligations of the Guarantors hereunder, which shall continue in full force and effect until the Obligations and all obligations of the Guarantors hereunder shall have been fully paid and performed.

#### 3. WAIVERS

A. Notice of Acceptance - Guarantors hereby waive notice of acceptance of this Guaranty, presentment and demand for payment, notice of dishonor, protest and notice of protest or non-compliance with the terms and provisions of the Lease, as same may be amended from time to time. No act or omission of any kind in the premises shall in any way affect or impair this Guaranty.

B. Marshalling of Assets - Guarantor hereby waives any right or claim of right to cause a marshalling of the Tenant=s assets or to cause Owner to proceed against any of the security held by Owner before proceeding against any Guarantor, or to proceed against any Guarantor in any particular order, and Guarantors hereby waive any requirement that Owner shall institute any action or

proceedings at law or in equity against Tenant, or anyone else, with respect to the Lease, or with respect to any other security held by Owner, as a condition precedent to bringing an action against any Guarantor upon this Guaranty.

C. No Waiver; Delay - No delay on the part of Owner in exercising any of its rights, powers or privileges or partial or single exercise thereof under this Guaranty or the Lease shall operate as a waiver of any such privileges, powers or rights. No waiver of any of its rights hereunder, and no modification or amendment of this Guaranty, shall be deemed to be made by Owner unless the same shall be in writing, duly signed on behalf of Owner by a duly authorized officer, and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the rights of Owner or the obligations of Guarantors to Owner in any other respect at any other time.

4. MISCELLANEOUS:

A. Expense of Enforcement - In the event this Guaranty is placed in the hands of an attorney for enforcement, Guarantor will reimburse Owner for all expenses incurred in connection therewith, including reasonable attorney's fees.

B. Reinstatement - This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of any of the Obligations, or any part thereof, is rescinded or must otherwise be returned by the Owner upon the insolvency of bankruptcy of the Borrower, or otherwise, all as though such payment had not been made.

C. Notices - All notices given hereunder shall be in writing and delivered by personal hand delivery or mailed by First Class US Mail, delivered to the addresses first listed above and shall be deemed to be delivered on the day of hand delivery or on the second business day following the date of deposit in the mail.

D. Warranty - The Guarantor hereby represents and warrants that this Guaranty has been duly executed and delivered and constitutes the valid and legally binding obligation of the Guarantor, enforceable in accordance with its terms.

E. Jurisdiction - The parties hereby consent and submit to the exclusive jurisdiction of the courts of the State of Delaware located in New Castle County, Delaware, for the adjudication of any rights or claims arising under this Guarantee or the Lease to which this Guarantee relates.

F. Severability - If any provision of this Guaranty shall contravene or be held invalid under the laws of any jurisdiction, this Guaranty shall be construed as if it did not contain such provision, and the rights, remedies, warranties, representations, covenants and provisions hereof shall be construed and enforced accordingly in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction, or any other provisions of this Guaranty.

G. Governing Law - The Guarantor and the Owner elect that the laws of Delaware shall govern the construction of this Guaranty and the rights, remedies, warranties, representations, covenants, and provisions hereof without regard to the principles of conflict of laws.

H. Interpretations - If this Guaranty is signed by more than one person, each Guarantor shall be jointly and severally liable hereunder and this Guaranty shall with respect to each Guarantor be interpreted, as if each Guarantor has delivered his or her sole and separate guaranty containing the identical provisions contained in this Guaranty. Words importing the singular number mean and include the plural number, and words of the masculine gender mean and include words of the feminine and/or neuter gender, and vice versa.

I. Headings - Section headings in the Guaranty are included for convenience of reference only and shall not constitute a part hereof for any other purpose.

J. Transfer of Benefit - This Guaranty shall be binding upon the Guarantor, his, her, or its successors, representatives and assigns, and shall inure to the benefit of, and be enforceable by the Owner, its successors and assigns.

K. Waiver of Jury Trial - Guarantor hereby intentionally, knowingly, voluntarily, expressly and mutually waives any right to trial by jury of any claim, demand, action or cause of action (1) arising under this Guarantee or the Lease guaranteed hereby, (2) in any way connected with or related or incidental to the dealings of Guarantor and Owner or any of them with respect to this Guarantee or the Lease guaranteed hereby, or the transactions related hereto or thereto, in each case whether now existing or hereafter arising and whether in contract or tort or otherwise, and Guarantor hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that Owner may file this original Guarantee or copy thereof with any court as written evidence to the consent of Guarantor to the waiver of right to trial by jury.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.

WITNESS

GUARANTORS:

\_\_\_\_\_

\_\_\_\_\_ (Seal)

Social Security No.: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (Seal)

Social Security No.: \_\_\_\_\_