

# Guaranty Agreement

SLS SAMPLE DOCUMENT 07/11/17

<b>Guarantor name:</b>	<b>Guarantor address and contact information:</b>
<b>Borrower name:</b>	<b>Guarantor relationship to Borrower:</b> Sole member and manager
<b>Loan Agreement to which this agreement relates:</b>  Loan Agreement, dated as of XX/XX/XXXX, between Borrower and [_____] (“Lender”)  Loan amount: \$XXXX Due date: XX/XX/XXXX Loan number: XXXX  Capitalized terms used in this Guaranty and not otherwise defined have the meanings given them in the Loan Agreement.  <b>Security agreement relating to this Guaranty:</b> yes/no	<b>Purpose of this document:</b> <ul style="list-style-type: none"> <li>• Provides that Guarantor will guaranty repayment by Borrower under the Loan Agreement</li> <li>• Provides that Guarantor will guaranty performance of all other duties of Borrower under the Loan Agreement and any related security agreement</li> <li>• Includes factual statements by Guarantor about its relationship with Borrower</li> <li>• Provides for waiver by Guarantor of certain rights under law</li> <li>• Provides Lender with other rights</li> <li>• Provides that Lender may contact credit reporting agencies to report Guarantor obligations and performance under this Agreement</li> <li>• Authorizes Lender to contact Guarantor by phone and other ways unless Guarantor opts out</li> </ul> This summarizes selected provisions of this agreement. It is intended to serve as a communications tool and, as such, does not cover every term.

The person identified above as “Borrower” wishes to borrow money from [\_\_\_\_\_] (“Lender”) under a Loan Agreement (“Loan Agreement”), of the date and amount set out above, to be signed concurrently with this Guaranty Agreement (“Guaranty”). Guarantor has a relationship with Borrower as described above and will benefit from Borrower’s entry into the Loan Agreement.

In order to induce Lender to enter into the Loan Agreement and make the loan to Borrower, Guarantor desires to guaranty payment and performance by Borrower of its repayment and other obligations under the Loan Agreement and any related security agreement, on the terms, including waivers of statutory and other rights, set out in this Guaranty. Capitalized terms used in this Guaranty and not otherwise defined have the meanings given them in the Loan Agreement.

By signing below, Guarantor confirms that Guarantor understands and agrees to the terms of this Guaranty.

**Client**

Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Borrower**

Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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# Terms and Conditions

## 1. Guaranty

### 1.1 Payment and Performance

Guarantor unconditionally and without limitation guarantees full and punctual (i) payment and satisfaction of all of Borrower's payment obligations under the Loan Agreement and (ii) performance and discharge of all of Borrower's other duties under the Loan Agreement and any related security agreement (collectively, "Guaranteed Obligations"). This is an open and continuing guaranty of payment and performance and not of collection.

### 1.2 Effectiveness and Duration

This Guaranty will be effective upon signature by Guarantor. No formal acceptance by Lender is necessary to establish or confirm such effectiveness. This Guaranty will continue in full force until all the Guaranteed Obligations are fully and finally paid, performed and discharged in full.

## 2. Guarantor Relationships and Actions

### 2.1 Benefit to Guarantor

Guarantor acknowledges and confirms that Guarantor has derived or expects to derive a financial or other advantage from every loan and other extension of credit from Lender to Borrower in respect of the Loan under the Loan Agreement, and from every renewal, extension, release of collateral, and other release or change of legal rights made, now or in the future, relating to the Loan Agreement and any related security agreement.

### 2.2 Information about Guarantor

Guarantor will be responsible for obtaining information about Borrower's financial condition and of all other circumstances bearing on the risk of nonpayment of the Guaranteed Obligations and the nature, scope, and extent of the risks that Guarantor assumes under this Guaranty.

### 2.3 No Representations by Lender

Guarantor acknowledges and agrees that Lender has not made any representations or assurances to Guarantor about the creditworthiness of Borrower or that would limit or qualify any of the terms of this Guaranty, that Guarantor has adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition, and that Lender will have no duty to advise Guarantor of information known to it regarding Borrower or such circumstances and risks.

### 2.4 Financial and Other Information

Guarantor will provide Lender with Guarantor's tax return and such other financial information and documents as Lender may reasonably request. Guarantor will notify Lender of any material changes in its relationship with Borrower and of any events or developments that may reasonably be expected to have a material adverse effect on Guarantor's financial condition.

### 2.4 Representations and Warranties

Guarantor represents and warrants to Lender that: (i) its entry into and performance of the Guaranty, and any security agreement relating to this Guaranty, will not result in a breach or default under any contract (including any loan agreement) or law by which Guarantor is bound; (ii) Guarantor has obtained all necessary corporate approvals and approvals from third parties as may be required for it to enter into and perform this Guaranty; and (iii) this Guaranty

has been duly executed by Guarantor and is the legal, valid, and binding obligation of Guarantor, enforceable against it in accordance with its terms.

### 2.5 Subordination

Guarantor confirms and agrees that any indebtedness of Borrower now or later owed to Guarantor and any claim Guarantor may have against Borrower is expressly subordinated to the Guaranteed Obligations. In the event of insolvency and liquidation of the assets of Borrower, Guarantor agrees that the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor will be paid first to Lender and will first be applied by Lender to the Guaranteed Obligations.

### 2.6 Credit Information and Reporting

Guarantor authorizes Lender to investigate Guarantor's creditworthiness and to receive credit information about Guarantor, as many times as necessary from other lenders, credit reporting agencies, credit references, and other sources. Lender may also furnish information about this Guaranty to credit reporting agencies and other persons who may legally receive such information. Guarantor acknowledges that the Loan amount will appear on Guarantor's credit report, and that Lender may submit a negative credit report to credit reporting agencies if Guarantor fails to fulfill the terms of its obligations under this Guaranty.

### 2.7 Non-Discrimination

The Federal Equal Credit Opportunity Act and the Title VI 1964 Civil Rights Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age; because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

### 2.8 Monitoring, Recording and Solicitations

(a) Guarantor authorizes Lender and Lender's affiliates, agents and independent contractors to contact Guarantor at any telephone number Lender may reach Guarantor, using any means of communication, including, without limitation, calls or text messages to mobile, cellular wireless or similar devices, and calls or text messages using an automated telephone dialing system and prerecorded messages, even if Guarantor incurs charges for receiving such communication.

(b) Guarantor agrees that Lender and Lender's affiliates, agents and independent contractors may use any other medium to contact Guarantor, as permitted by law, including, without limitation, mail, e-mail and facsimile.

(c) Guarantor is not required to agree to sections (a) and (b) of this Section 2.8. If Guarantor wishes to opt out of either or both of these sections, or if Guarantor wants to change the method of contact, including any telephone number that Lender might use, Guarantor should call Lender at [\_\_\_\_\_] or write to Lender at: [\_\_\_\_\_]

## 3. Lender Rights and Enforcement

### 3.1 Lender Rights to Enforce

Lender may enforce this Guaranty, and its rights under any security agreement relating to this Guaranty, against Guarantor even when Lender has not made a demand on

Borrower or exhausted Lender's remedies against Borrower, the collateral under any security agreement relating to the Loan Agreement ("Collateral"), any other guarantors, or anyone else that may be obligated to pay and perform the Guaranteed Obligations. The obligations of Guarantor are independent of the obligations of Borrower or of any other guarantor to Lender. By way of example but not of limitation:

- (a) Lender may bring a separate action against Guarantor, whether or not it brings an action against Borrower or joins Borrower in any action commenced.
- (b) Lender may enforce this Guaranty upon the occurrence and during the continuance of an Event of Default notwithstanding the existence of any dispute between the Borrower and Lender with respect to the existence of such Event of Default.
- (c) Lender may enforce this Guaranty whether or not the Guaranteed Obligations are due or payable by Borrower on: (i) the death, dissolution, insolvency, or business failure of, or any commencement of bankruptcy or insolvency proceedings against Borrower or Guarantor; or, (ii) the appointment of a receiver for, or the attachment, restraint of, or making or levying of any court order or legal process affecting, the property of Borrower or Guarantor.
- (d) Lender may bring a separate action against Guarantor, whether or not it brings an action against any other guarantor of the Guaranteed Obligations, or joins any other guarantor in any action commenced.

### 3.2 Lender Actions

Guarantor acknowledges and agrees that Lender may take actions relating to the Borrower, the Guaranteed Obligations, and the Collateral, and that Lender has no obligation to notify Guarantor or obtain Guarantor's consent to such actions. Such actions include, without limitation: (i) making additional loans to Borrower or otherwise extending additional credit to Borrower; (ii) renewing, extending, accelerating, and otherwise changing the time for payment or performance of the Guaranteed Obligations; (iii) modifying any other terms of any of the Loan Documents, including changing the applicable interest rate; (iv) taking and holding additional security for the Guaranteed Obligations; (v) perfecting its interest in the Collateral or any new security, or exchanging, enforcing, waiving, or releasing all or any part of the Collateral or such additional security; (vi) purchasing all or any part of the Collateral at a public or private sale with or without the substitution of new collateral; (vii) releasing, substituting, agreeing not to sue, or dealing with any one or more of Borrower's endorsers, other guarantors, and other obligors under the Loan Agreement; (viii) determining how, when, and what application of payments and credits will be made on the Guaranteed Obligations; (ix) selling, transferring, assigning or granting participations in all or any part of the Guaranteed Obligations; and (x) assigning its rights under the Loan Agreement and any related security agreement or other guaranty. Guarantor confirms and agrees that no such actions will impair, limit or otherwise affect Guarantor's obligations under this Guaranty.

### 3.3 Payment

Upon demand by Lender, Guarantor will make any payments in respect of the Guaranteed Obligations to Lender, in cash or by check or wire transfer in same-day funds, without set-

off, deduction or counterclaim, and will otherwise perform or cause to be performed all other Guaranteed Obligations.

### 3.4 Multiple Guarantors

If there are multiple guarantors in respect of the Loan Agreement, the obligations of all such guarantors will be joint and several. Lender's rights under all guarantees will be cumulative. Nothing in this Guaranty will impair, limit, or otherwise affect such other guarantees.

### 3.5 Obligations of Married Persons

Any married person who signs this Guaranty expressly agrees that recourse may be had against both his or her separate property and community property in respect of his or her obligations under this Guaranty.

## 4. Waivers by Guarantor

### 4.1 Intent and Acknowledgments

Guarantor confirms, acknowledges and agrees as follows:

- (a) Guarantor confirms that the intent of this Guaranty is to waive, to the extent permitted by law, provisions and principles of California law relating to guarantor protections, including, without limitation, those provided by California suretyship, guaranty and anti-deficiency laws, and those included in the California Commercial Code.
- (b) Guarantor understands that these are unconditional and irrevocable waivers of substantive rights and defenses, and that such waivers are reasonable and not contrary to public policy or law.

(c) Guarantor acknowledges that Guarantor has provided these waivers of rights and defenses with conditions and with the intention that they be fully relied and acted upon by Lender, and understands and agrees that this Guaranty is a separate and independent contract between Guarantor and Lender.

For clarity, any references in this Section 4 to "creditor" refers to Opportunity Fund, and references to "guarantor" and "borrower" refer to the defined terms "Guarantor" and "Borrower."

### 4.2 Right to Require Performance

To the fullest extent permitted by law, Guarantor waives the right to require Lender to: (i) give notice of any kind, including, without limitation, notice of change of any terms of the Loan Agreement or any related security agreement, occurrence of an Event of Default, breach by any other guarantor, creation of new or additional indebtedness, or the terms, time, and place of any sale of the Collateral, or to make any presentment, protest or demand of any nature; (ii) proceed against Borrower or any other person liable in respect of the Loan Agreement; (iii) proceed against or exhaust the Collateral or any other security granted by Borrower or any other person before proceeding against Guarantor; (iv) have the property of Borrower first applied to the discharge of the Guaranteed Obligations; and (v) pursue any other remedy in Lender's power.

### 4.3 Defenses

To the fullest extent permitted by law, Guarantor waives any and all rights or defenses arising by reason of: (i) any defense of Borrower or any other guarantor or other person other than payment and performance in full of the

Guaranteed Obligations; (ii) the termination from any cause whatsoever, other than payment in full, of the Guaranteed Obligations; (iii) the application of the proceeds of the Guaranteed Obligations by Borrower for purposes other than those required by the Loan Agreement or otherwise understood by Guarantor or Lender; (iv) the absence, impairment, or loss of any right of reimbursement, contribution, or subrogation, or any other right of Guarantor against Borrower, the Collateral, or any other security, whether resulting from the election by Lender or otherwise; (v) any statute of limitations in any action under this Guaranty or in respect of the Loan Agreement; (vi) any modification or change in terms of the Loan Agreement or any related security agreement or any rescission of such a modification; (vii) any defense arising under the federal bankruptcy laws; (viii) any other defenses that become available to Guarantor by reason of California Civil Code Sections 2787-2855 inclusive; and (ix) any defenses that may arise as a result of any choice of remedies made by Lender.

#### **4.4 Legal Rights and Benefits**

To the fullest extent permitted by law, Guarantor waives all rights and benefits: (i) of subrogation, reimbursement, indemnification, and contribution and any other rights that become available to Guarantor by reason of California Civil Code Sections 2787-2855 inclusive; (ii) any right of subrogation to any right that Lender now has or may have later against Borrower in connection with the Guaranteed Obligations and any benefit of, and any right to participate in, any Collateral or other security now or later held by Lender in respect of the Guaranteed Obligations until the Guaranteed Obligations has been paid in full, including any part of the Guaranteed Obligations, if any, that exceeds Guarantor's liability under this Guaranty; (iii) any rights that may arise as a result of choice of remedies made by Lender; (iv) any rights under California Civil Code Section 2809, which provides that a guarantor's obligations may not exceed nor be more burdensome than the principal obligation; and (v) without limiting the generality of the foregoing or any other provision of this Guaranty, any rights under California Civil Code Sections 2899 and 3433, to the extent these provisions have any application to this Guaranty or the Guarantor.

#### **4.5 Real Property Security**

To the extent permitted by law, Guarantor waives all rights and defenses that Guarantor may have because the debtor's debt is secured by real property. This means, among other things: (i) The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor; (ii) if the creditor forecloses on any real property collateral pledged by the debtor, (x) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (y) the creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor; this is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property; these rights and defenses include, without limitation, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure; and (iii) the guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a

guaranteed obligation, has destroyed or may destroy the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

#### **4.6 Insider**

Guarantor is a director, officer, shareholder, member, manager or person in control of Borrower, or a relative of such person, and as such, may be deemed to be an "insider" as defined in 11 United States Code §101. Guarantor expressly waives and agrees not to assert any claim (as defined in §101) that Guarantor has or may have against Borrower for any payment or transfer that Guarantor is obligated to make to Lender under this Guaranty or under any other agreement with a creditor of Borrower. Guarantor's obligations under this Guaranty include all amounts paid to Lender by Borrower that may be later recovered from Lender in a legal proceeding.

### **5. General Provisions**

#### **5.1 Entire Agreement; Amendment**

This Guaranty, together with any security agreement relating to this Guaranty, expresses the final, complete, and exclusive agreement between Lender and Guarantor, and supersedes all prior or contemporaneous communications, representations, understandings, and agreements, either oral or written, relating to the guaranty arrangement set out in this Guaranty. This Guaranty may be amended only as stated in a written document signed by both Lender and Guarantor which states that it is an amendment to this Guaranty.

#### **5.2 Successors and Assigns**

This Guaranty will bind and insure to the benefit of the respective successors and assigns of each of Guarantor and Lender. Guarantor will not, directly or indirectly by way of merger or consolidation, assign its rights or delegate its duties under this Guaranty without Lender's prior written approval. Lender may, without the consent of Guarantor, assign or grant participation rights in all or any portion of its rights under this Agreement to one or more financial institutions or an agent of such financial institutions. In connection with this assignment, Lender may disclose all documents and information that Lender has or may later have relating to Guarantor.

#### **5.3 Severability; Waiver**

If any provision in this Guaranty is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law. Any waiver under this Guaranty must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Guaranty will not be considered a waiver of any later breach or of the right to enforce any provision of this Guaranty.

#### **5.4 No Presumption Against Drafter**

This Guaranty will be construed without regard to any presumption or rule requiring construction against the party drafting the Guaranty.

#### **5.5 Jury Trial Waiver**

To the extent permitted by law, each of Lender and Guarantor, after consulting (or having had the opportunity to consult) with counsel of its, his or her choice, knowingly and voluntarily, and for the mutual benefit of both parties, waives

any right to trial by jury in the event of litigation arising out of or related to this Guaranty or any other document, instrument, or agreement between Lender and Guarantor.

**5.6 Attorney's Fees; Costs of Enforcement**

If there is any mediation, arbitration or legal action to enforce or interpret this Agreement, then the prevailing party will be entitled to recover from the non-prevailing party all costs and expenses, including reasonable attorneys' fees and costs, incurred in the action or proceeding. Attorneys' fees and costs will include paralegal fees, expert witness fees, copy and delivery costs, and all other costs and expenses. Guarantor will, upon demand, immediately reimburse Lender for all costs and expenses, including attorney fees, incurred

in collecting, enforcing or restructuring Guarantor's obligations under this Guaranty.

**5.7 Governing Law; Jurisdiction**

This Guaranty will be governed by California law. Guarantor consents to the exclusive jurisdiction of the state and federal courts for [\_\_\_\_\_], California.

**5.8 Counterparts**

This Guaranty may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.