In light of the limitless breadth of potential suretyship defenses and the lack of authoritative omnibus waiver language, it is not practicable for us to recommend any particular text or even any particular approach.[376] Instead, we recommend that the Beneficiary and its legal counsel consider the context of the particular transaction and the approach that, within that context, will best achieve the legal and business results desired.

Very truly yours,

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(g) consent to or waive any breach of, or any act, omission or default under, this Loan Guaranty, the Credit Agreement, any other Loan Document, any Hedge Agreement with respect to any Secured Hedging Obligation or any of the instruments or agreements referred to herein or therein, or otherwise amend, modify or supplement this Loan Guaranty, the Credit Agreement, any other Loan Document, any Hedge Agreement with respect to any Secured Hedging Obligation or any of such other instruments or agreements; and/or

(h) take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of the Loan Guarantors from their respective liabilities under this Loan Guaranty.

The RESTATEMENT (THIRD) OF SURETYSHIP & GUARANTY, in Comment *d* to section 48, states that "a statement to the effect that the duty of the secondary obligor [i.e., guarantor] is absolute and unconditional is ordinarily not sufficient to indicate that the secondary obligor is agreeing to forego discharges based on suretyship status.... [but] [g]eneral language indicating that the secondary obligor waives defenses based on suretyship is sufficient." A guaranty that provided that it was "absolute and unconditional irrespective of lack of validity or enforceability of the guaranty or any other circumstance that might otherwise constitute a defense available to a guarantor in respect of the guaranty" was held sufficient to bar a defense of fraud in the inducement, see e.g., Citibank, N.A. v. Plapinger, 66 N.Y. 90, 495 N.Y.S.2d 309, 455, N.E. 2d 974 (1985); and it might be argued that the same logic adopted by the court in that case (i.e., to accept the guarantor's fraudulent inducement defense, notwithstanding the guarantor's disclaimer in his guaranty, would in effect condone his own fraud in his expressed disclaimer) also should apply to an omnibus suretyship defense waiver.

376 See footnote 327 above. We note, however, the prudence of considering inclusion of a severability clause in the contractual guarantee, especially where an expansive approach to drafting suretyship and other waivers is being undertaken. A severability clause indicates the parties' intention that the balance of the subject contract is intended to be enforced notwithstanding that one or more discrete aspects of it may be held unenforceable.