

**FILED**

**2008 Jun 18 AM 01:21**

CLERK U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

**EXHIBIT 10**

Forbearance Agreement



Exhibit C

## FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (this "Agreement"), is dated as of March 7, 2002, and is entered into by and among LEVEL PROPANE GASES, INC., an Ohio corporation ("LPG"), THE PARK PLACE COMPANIES, INC., an Ohio corporation ("PPC"), PARK PLACE MANAGEMENT, INC., an Ohio corporation ("PPM"), PARK PLACE, INC., an Ohio corporation ("PPI") and OVERFLO LOT, INC., an Ohio corporation ("Overflo") (LPG, PPC, PPM, PPI and Overflo are sometimes hereinafter referred to individually as a "Borrower" and collectively as the "Borrowers"); WHM EMPRISES, INC., an Ohio corporation ("WHM"), LEVEL ENERGY GROUP, INC., an Ohio corporation ("LEG"), WILLIAM H. MALOOF, an individual ("Principal") (WHM, LEG and Principal are sometimes hereinafter referred to individually as a "Guarantor" and collectively as the "Guarantors"); LPG, acting in its capacity as borrowing agent and funds administrator for the Borrowers (LPG, in such capacity, the "Funds Administrator"); BT COMMERCIAL CORPORATION, a Delaware corporation, acting in its capacity as agent (in such capacity, hereinafter referred to as "Agent") for Bankers Trust Company and the other financial institutions from time to time lenders under the Credit Agreement referred to herein below (each a "Lender" and, collectively, the "Lenders"); and the Lenders (Agent and Lenders being sometimes hereinafter referred to individually as a "Lender Party" and collectively as "Lender Parties"). Capitalized terms used herein but not otherwise defined herein shall have the respective meanings assigned to such terms in the Credit Agreement.

## RECITALS

A. Pursuant to that certain Credit Agreement dated as of November 30, 1999, as amended (such Credit Agreement, as heretofore and hereafter amended, restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement"), by and among Borrowers, Co-Obligor and Lender Parties, Borrowers and Co-Obligor have incurred the Obligations.

B. Pursuant to that certain Guaranty dated as of November 30, 1999 (such Guaranty, as amended, restated, supplemented or otherwise modified and in effect from time to time, the "WHM Guaranty"), executed by WHM Emprises, Inc., an Ohio corporation ("WHM"), in favor of Agent, WHM has guaranteed the prompt and complete payment, performance and observance of all Obligations.

C. Pursuant to that certain Guaranty dated as of November 30, 1999 (such Guaranty, as amended, restated, supplemented or otherwise modified and in effect from time to time, the "LEG Guaranty"), executed by Level Energy Group, Inc., an Ohio corporation ("LEG"), in favor of Agent, LEG has guaranteed the prompt and complete payment, performance and observance of all Obligations.

D. Pursuant to that certain Guaranty dated as of November 1, 2000 (such Guaranty, as amended, restated, supplemented or otherwise modified and in effect from time to time, the "Principal Guaranty"), executed by Principal, in favor of Agent, Principal has guaranteed the prompt and complete payment, performance and observance of all Obligations.

(a) **Representations and Warranties.** The representations and warranties of the respective Credit Parties set forth in this Agreement, the Credit Agreement and the other Credit Documents shall be true and correct in all material respects, except with regard to the Existing Defaults.

(b) **Delivery of this Agreement.** Agent shall have received a counterpart of this Agreement duly authorized, executed and delivered by the Credit Parties and Lenders.

(c) **Performance: No Default.** Each of the Credit Parties shall have performed and complied with all agreements and conditions contained in the Credit Documents to be performed or complied with by such Credit Party prior to the date hereof, other than those express terms of the Credit Documents which are the subject of the Existing Defaults, and no Event of Default or Default shall exist other than the Existing Defaults.

(d) **Approvals.** The approval and/or consent of all Persons whose approval or consent is necessary or required to enable the respective Credit Parties to enter into this Agreement and any other documents delivered in connection herewith and to perform their respective obligations hereunder and thereunder, shall have been obtained.

(e) **Proceedings and Documents.** All corporate and other proceedings required in connection with the authorization, execution and delivery of this Agreement and any other documents delivered in connection herewith shall be satisfactory in all respects to Agent, and Agent shall have received all such counterpart originals or certified or other copies of agreements, documents and instruments evidencing such proceedings as the Agent may reasonably request.

(f) **Officers.** Agent shall have received evidence satisfactory to Agent that the Principal has relinquished in writing all authority to incur obligations or make disbursements on any Credit Party's behalf, including, without limitation, the authority to sign checks or otherwise direct disbursements with respect to all depository or other bank accounts maintained by any Borrower.

(h) **Short Term Budget.** Credit Parties shall have prepared and delivered to Agent a schedule of projected cash receipts and disbursements on a daily basis covering the period commencing March 6, 2002 through and including March 29, 2002 (the "Short Term Budget"), which Short Term Budget (x) is prepared in such form and with such specificity as shall be in each case acceptable to Agent, and (y) contains such cash receipts and disbursements as shall be in all respects satisfactory to Agent.

(i) **Newmarket Engagement Agreement.** Agent shall have received evidence satisfactory to Agent that (i) LPG and Newmarket Partners, LLC, an Ohio limited liability company ("Newmarket") have duly executed and delivered an engagement agreement substantially in the form attached hereto as Exhibit A (the "Newmarket Agreement"), providing, among other things, for provision by Newmarket

to LPG of the "Services" (as such term is defined in the Newmarket Agreement), (ii) the Newmarket Agreement is in full force and effect, and (iii) the Board of Directors of LPG has duly adopted a resolution appointing John Rudd, a Manager of Newmarket, as LPG's Chief Restructuring Officer possessing all of the requisite power and authority with respect to such office described in the Newmarket Agreement.

The date on which all of the conditions set forth in this Paragraph 4 have been satisfied is referred to herein as the "Effective Date."

**5. Termination of Forbearance.** The agreement of Lender Parties to forbear on a daily basis in the exercise of their sole and absolute discretion pursuant to this Agreement shall immediately and automatically terminate, without further notice, act or instrument, upon the occurrence of any of the following:

(a) any Credit Party repudiates or asserts a defense to any liability, or to any agreement, condition, undertaking or other obligation, in each case of such Credit Party under the Credit Agreement or any of the other Credit Documents, including, without limitation, any liability, agreement, condition, undertaking or other obligation of such Credit Party set forth in this Agreement, or makes or pursues a claim against Lender Parties or any of them; or

(b) any Credit Party fails to perform or satisfy any of agreements, conditions, undertakings or other obligations of such Credit Party set forth in the Credit Documents (other than any of the foregoing that are the subject of the Existing Defaults), including, without limitation, the agreements, conditions, undertakings or other obligations of such Credit Party set forth in this Agreement; or

(c) any Credit Party makes an assignment for the benefit of creditors, generally admits the inability of such Credit Party to pay its debts as they come due, files a petition in bankruptcy, or an involuntary petition in bankruptcy is filed naming such Credit Party as an alleged debtor; or

(d) Agent hereafter becomes aware of (i) any facts or circumstances that Agent believes in good faith singly or in the aggregate could impact Lender Parties' security, or the ability of the Credit Parties to satisfy in full their respective payment and other obligations under the Credit Documents, in each case in any material respect, or (ii) the existence of any Defaults or Events of Default, other than the Existing Defaults, whether now existing or hereinafter occurring; or

(e) any Credit Party is generally not paying the debts of such Credit Party as they come due; or

(f) on or before March 29, 2002, the Credit Parties fail to provide Agent with a schedule of projected cash receipts and disbursements on a weekly basis covering the eight (8) week period commencing April 1, 2002 (the "Long Term Budget" and, together with the Short Term Budget and all other such budgets, if any, from time to time

prepared by Credit Parties at the request of Agent and delivered to Lender Parties hereunder, sometimes hereinafter referred to collectively as the "Budget"), which Long Term Budget (x) is prepared in such form and with such specificity as shall be in each case acceptable to Agent, and (y) contains such cash receipts and disbursements as shall be in all respects satisfactory to Agent; or

(g) (i) on or before March 31, 2002, LPG and Equal Justice Foundation, and their respective counsel, fail to execute and deliver a Stipulation of Settlement (the "Settlement Agreement") with respect to Case No. C-2-98-959 (Larry Mick, et al v. Level Propane Gases, Inc.) (the "Ohio Class Action Case") pending in the United States District Court for the Southern District of Ohio Eastern Division (the "Ohio Federal Court"), substantially in the form attached hereto as Exhibit A; or (ii) on or before April 15, 2002, the Ohio Federal Court fails to enter an Order Preliminarily Approving Stipulation of Settlement, Directing Notice to the Class and Scheduling Settlement Hearing in the Ohio Class Action Case substantially in the form attached hereto as Exhibit B; or (iii) on or before June 1, 2002, the Ohio Federal Court fails to enter an Order and Final Judgment in the Ohio Class Action Case substantially in the form attached hereto as Exhibit C; or

(h) on or before March 31, 2002, a Consent Judgment Entry and Order substantially in the form attached hereto as Exhibit D is not entered by the Court of Common Pleas Delaware county, Ohio, with respect to Case No. Case No. 01-CVH-01-018 (State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio v. Level Propane Gases, Inc.) pending in such court; or

(i) Lender Parties determine in good faith that the level of cash receipts generated by Credit Parties is insufficient to cover anticipated cash disbursements; or

(j) Credit Parties make cash disbursements in any weekly period in excess of the level of cash disbursements with respect to such weekly period set forth in the Budget; or

(k) At any time prior to the payment and satisfaction in full of all Obligations, the Principal assumes or otherwise claims authority to incur obligations or make disbursements on any Credit Party's behalf, including, without limitation, the authority to sign checks or otherwise direct disbursements with respect to any depository or other bank accounts maintained by any Borrower; or

(l) on or before April 4, 2002, LPG and Parthenon Capital, LLC ("Parthenon Capital") fail to execute and deliver a definitive purchase agreement in form and substance satisfactory to Lender Parties in their sole and absolute discretion in connection with Parthenon Capital's investment in LPG (the "Parthenon Transaction") contemplated by the letter of intent dated February 6, 2002, delivered by Parthenon Capital to LPG and the Principal, the effectiveness of which agreement shall not be subject to Parthenon Capital's completion or satisfaction with the results of additional due diligence; or

(m) (i) the Newmarket Agreement shall cease for any reason to be in full force and effect, or (ii) any party to the Newmarket Agreement shall deny or disaffirm its obligations thereunder, or (iii) the Board of Directors of LPG shall adopt an "Amending Resolution" (as such term is defined in the Newmarket Agreement), or (iv) any Person shall challenge the enforceability or effectiveness of the Newmarket Agreement; or

(n) Lender Parties determine in good faith that consummation of the Parthenon Transaction is not likely to occur.

#### 6. No Waiver; Subsequent Defaults.

(a) Each of the Credit Parties acknowledges that nothing contained herein is intended, or shall be deemed or construed to be, and no further Loans or other extensions of credit made pursuant to Credit Agreement are intended, or shall be deemed or construed to be, a waiver or release by Lender Parties or any of them, of any right, claim or cause of action, including, without limitation, any such right, claim or cause of action arising from or related to, directly or indirectly, the Existing Defaults or a waiver or release of the Existing Defaults themselves. Lender Parties expressly reserve all rights, claims and causes of action against Credit Parties, including without limitation, all such rights, claims and causes of action arising from or related to, directly or indirectly, the Existing Defaults.

(b) Each of the Credit Parties represents and warrants that the Existing Defaults are the only Defaults or Events of Default existing as of the date hereof. Lender Parties reserve all rights, claims and causes of action with respect to defaults and/or Events of Default other than the Existing Defaults, and each of the Credit Parties acknowledges that nothing herein prohibits or prevents, or shall be construed or deemed to prohibit or prevent, the exercise or enforcement by Lender Parties, or any of them, of any such right, claim or cause of action at any time.

(c) Each of the Credit Parties covenants and agrees that from and after the Effective Date it shall not take any of the following actions: (i) make any Restricted Payments; (ii) make any payments, loans or other distributions to, or engage in any transactions with, any officers, directors or other Affiliates of any Credit Party, except in the ordinary course of and pursuant to the reasonable requirements of such Credit Party's business and upon fair and reasonable terms no less favorable to such Credit Party than could be obtained in a comparable arms-length transaction with an unaffiliated Person; or (iii) operate the business of such Credit Party other than in the ordinary course.

Any default by any Credit Party of its obligations under this Agreement shall constitute an Event of Default under the Credit Agreement.

7. Representations and Warranties. Each of the Credit Parties hereby acknowledges and confirms to the Lender Parties that the representations and warranties set forth in the Credit Agreement and other Credit Documents are true and correct in all material respects as of the date

hereof (except with regard to the absence of the Existing Defaults), which representations and warranties shall be deemed to be remade as of the Effective Date. Each of the Credit Parties represents and warrants to Lender Parties that: (a) such Credit Party has full power and authority to execute and deliver this Agreement and to perform such Credit Party's obligations hereunder; (b) upon the execution and delivery hereof, this Agreement will be valid, binding and enforceable upon such Credit Party in accordance with its terms; (c) the execution and delivery of this Agreement does not and will not contravene, conflict with, violate or constitute a default under the articles of incorporation or by-laws of such Credit Party, if applicable, or any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which such Credit Party is a party or is bound or which is binding upon or applicable to all or any portion of such Credit Party's property; and (d) no Default or Event of Default presently exists, other than the Existing Defaults.

8. **Bankruptcy Relief.** In the event any Credit Party (a) files any voluntary petition under any Chapter of Title 11 of the U.S. Code (11 U.S.C. §§ 101 et seq.), as amended from time to time, or any successor statute (the "Bankruptcy Code"), or in any manner seeks any relief under any other state, federal or other insolvency law or laws providing for relief of debtors, or directly or indirectly causes a filing of any such petition or to seek any such relief; (b) is named as a debtor or alleged debtor in any involuntary petition filed under any Chapter of the Bankruptcy Code, or directly or indirectly causes any involuntary petition under any Chapter of the Bankruptcy Code to be filed against any Credit Party, or directly or indirectly causes any Credit Party to become the subject of any proceeding pursuant to any other state, federal or other insolvency law or laws providing for the relief of debtors; or (c) directly or indirectly causes any Collateral or any interest of any Credit Party in any Collateral to become the property of any bankruptcy estate or the subject of any state, federal or other bankruptcy, dissolution, liquidation or insolvency proceeding, such Credit Party agrees that it will not contest or object to any pleading filed by or on behalf of Lender Parties seeking the lifting of the automatic stay by the appropriate United States Bankruptcy Court (the "Bankruptcy Court") "for cause" pursuant to Section 362(d)(1) of the Bankruptcy Code (11 U.S.C. Section 362(d)(1)). Each of the Credit Parties hereby agrees that the Bankruptcy Court may enter an order lifting the automatic stay without the necessity of an evidentiary hearing and without the necessity of Agent establishing the lack of adequate protection of its interest in the Collateral or the lack of equity in the Collateral and lack of necessity of the Collateral for an effective bankruptcy reorganization. Each of the Credit Parties hereby agrees that the automatic stay shall be lifted within thirty (30) days of filing the applicable motion.

9. **Costs and Expenses.** Credit Parties jointly and severally agree to reimburse Lender Parties for all fees, costs and expenses incurred in the preparation, negotiation and execution of this Agreement and the consummation of the transactions contemplated hereby, including, without limitation, the fees, costs and expenses of legal counsel for Agent.

10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Facsimile versions of signatures hereto shall be deemed original signatures, which may be relied upon by all parties hereto and shall be binding on the respective signors thereof.

11. Further Assurances. Each of the Credit Parties hereby covenants and agrees that such Credit Party will at any time and from time to time do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, documents and instruments as reasonably may be required by Agent to effectuate fully the intent of this Agreement.

12. No Novation. This Agreement is not intended and shall not be deemed or construed to constitute a novation, nor is this Agreement intended and shall not be deemed or construed as a release, waiver, extension of forbearance or modification of any of the terms, conditions, representations, warranties, covenants, rights or remedies set forth in any of the Credit Documents, except as expressly stated herein.

13. Severability. If any term or provision of this Agreement or the application thereof to any party or circumstance shall be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby, and the affected term or provision shall be modified to the minimum extent permitted by law so as to achieve most fully the intention of this Agreement.

14. Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

15. Entire Agreement. Except to the extent expressly set forth herein, Lender Parties reserve and preserve all of their respective rights and remedies under the Credit Agreement and the other Credit Documents. This Agreement contains the entire agreement among the Lender Parties and Credit Parties with respect to the Existing Defaults, and with respect to the agreement of Lender Parties to forbear on a conditional basis from exercising rights and remedies on account of the Existing Defaults.

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[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

**BORROWERS:**

**LEVEL PROPANE GASES, INC.**

By: William H Maloof  
Name: WILLIAM H. MALOOF  
Title: CHIEF EXECUTIVE OFFICER

**THE PARK PLACE COMPANIES, INC.**

By: William H Maloof  
Name: WILLIAM H. MALOOF  
Title: CHIEF EXECUTIVE OFFICER

**PARK PLACE MANAGEMENT, INC.**

By: William H Maloof  
Name: WILLIAM H. MALOOF  
Title: CHIEF EXECUTIVE OFFICER

**PARK PLACE, INC.**

By: William H Maloof  
Name: WILLIAM H. MALOOF  
Title: CHIEF EXECUTIVE OFFICER

**OVERFLO LOT, INC.**

By: William H Maloof  
Name: WILLIAM H. MALOOF  
Title: CHIEF EXECUTIVE OFFICER

**CO-OBLIGOR AND GUARANTORS:**

*William H. Maloof*  
**WILLIAM H. MALOOF**

**WHM EMPRISES, INC.**

By: *William H. Maloof*  
Name: WILLIAM H. MALOOF  
Title: CHIEF EXECUTIVE OFFICER

**LEVEL ENERGY GROUP, INC.**

By: *William H. Maloof*  
Name: WILLIAM H. MALOOF  
Title: CHIEF EXECUTIVE OFFICER