

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): **June 4, 2012**

**ALEXANDER & BALDWIN, INC.**

(Exact Name of Registrant as Specified in its Charter)

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**HAWAII**  
(State or Other Jurisdiction of  
Incorporation)

**000-00565**  
(Commission File Number)

**99-0032630**  
(I.R.S. Employer Identification No.)

**822 Bishop Street, P.O. Box 3440**  
**Honolulu, Hawaii**  
(Address of Principal Executive Offices)

**96801**  
(Zip Code)

Registrant's telephone number including area code: **(808) 525-6611**  
No change since last report  
(Former Name or Address, if Changed Since Last Report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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## **Item 1.01 Entry into a Material Definitive Agreement**

The information set forth under the headings "A&B Financing" and "Matson Financing" in Item 2.01 is incorporated herein by reference.

## **Item 2.01 Completion of Acquisition or Disposition of Assets.**

### *Holding Company Reorganization*

On June 6, 2012, Alexander & Baldwin Holdings, Inc., a Hawaii corporation ("Holdings"), completed its previously-announced holding company reorganization pursuant to the Agreement and Plan of Merger, dated as of February 13, 2012 (the "Merger Agreement"), by and among Holdings, Alexander & Baldwin, Inc., a Hawaii corporation (the "Company"), and A&B Merger Corporation, a Hawaii corporation ("Merger Sub"). The Merger Agreement was approved and adopted by the Company's shareholders at the Company's annual meeting of shareholders, which was held on May 11, 2012, and by Holdings as the sole shareholder of Merger Sub.

The Merger Agreement provided for the merger of Merger Sub with and into the Company, with the Company surviving as a wholly owned subsidiary of Holdings (the "Merger"), and the conversion of each share of common stock, without par value, of the Company ("A&B Common Stock"), issued and outstanding immediately prior to the effective time of the Merger, into one share of common stock, without par value, of Holdings ("Holdings Common Stock"). Each outstanding option to acquire shares of A&B Common Stock was automatically converted into an option to acquire an identical number of shares of Holdings Common Stock. In addition, each outstanding restricted stock unit award or deferred stock award covering shares of A&B Common Stock was automatically converted into a restricted stock unit award or deferred stock award covering an identical number of shares of Holdings Common Stock. The shares of A&B Common Stock reserved under each A&B equity incentive plan assumed by Holdings in the Merger were also converted into shares of Holdings Common Stock on a one-for-one basis.

Upon completion of the Merger, Holdings replaced the Company as the publicly held corporation through which the Company's operations are conducted, and the holders of A&B Common Stock now hold the same number of shares and same ownership percentage of Holdings as they held of the Company immediately prior to the Merger. As of June 7, 2012, shares of Holdings Common Stock commenced trading on the New York Stock Exchange under the symbol "ALEX," which was previously the Company symbol.

The directors and executive officers of Holdings immediately following the Merger are the same individuals who were directors and executive officers, respectively, of the Company immediately prior to the Merger.

Upon completion of the Merger, Holdings Common Stock was deemed to be registered under Section 12(b) of the Securities Exchange Act of 1934, as amended, pursuant to Rule 12g-3(a) promulgated thereunder. For purposes of Rule 12g-3(a), Holdings is the successor issuer to the Company.

The foregoing description of the terms of the Merger Agreement is not complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which was filed as Exhibit 2.1 to Holdings' Registration Statement on Form S-4 filed with the Securities and Exchange Commission (the "SEC") on February 15, 2012, as amended and supplemented (the "Registration Statement").

### *Maritime Restrictions*

As described in proxy statement/prospectus that forms a part of the Registration Statement, shares of Holdings Common Stock are subject to certain ownership limitations (the "Maritime Restrictions"). The Maritime Restrictions are designed to help preserve Holdings' status as a U.S. citizen under certain U.S. maritime and vessel documentation laws (popularly referred to as the Jones Act) by, among other things, limiting the percentage of outstanding shares of Holdings Common Stock that may be owned (of record or beneficially) or controlled in the aggregate by non-U.S. citizens (as defined by the Jones Act) to a maximum permitted percentage of 22%.

### *Internal Reorganization*

Following consummation of the Merger, Holdings caused the following transactions to be effected on June 7, 2012:

- the Company was converted (the "A&B LLC Conversion") to a Hawaii limited liability company, Alexander & Baldwin, LLC ("A&B LLC");
- A&B LLC distributed all of the outstanding equity interests of Matson Navigation Company, Inc., a Hawaii corporation ("Matson"), to Holdings; and
- Holdings contributed all of the outstanding equity interests of A&B LLC to A & B II, Inc., a Hawaii corporation and a direct, wholly owned subsidiary of Holdings ("New A&B").

### *Separation*

It is expected that Holdings will enter into a Separation and Distribution Agreement, and certain related ancillary agreements (forms of which were filed as exhibits to New A&B's Registration Statement on Form 10 filed with the SEC on February 4, 2012, as amended and supplemented) with New A&B to effect the previously-announced plan to separate the Company into two independent, publicly traded companies (New A&B, comprising the Company's real estate and agriculture businesses, and Holdings (to be renamed Matson, Inc.), comprising the Company's transportation businesses) (the "Separation"). In the Separation, Holdings will distribute, on a pro rata basis, to its shareholders all of the issued and outstanding common stock of New A&B.

On June 6, 2012, Holdings received a favorable private letter ruling from the U.S. Internal Revenue Service confirming the tax-free nature of the Separation.

### *A&B Financing*

On June 4, 2012, the Company entered into an amended three-year unsecured note purchase and private shelf agreement, dated as of June 4, 2012 ("A&B Note Agreement") with Prudential Investment Management, Inc. ("PIM) and certain affiliates of PIM party thereto (individually and, collectively with PIM, "Prudential") under which A&B LLC may issue notes in an aggregate amount up to \$300 million less the sum of all principal amounts then outstanding on any notes issued by A&B LLC (or, prior to the A&B LLC Conversion, the Company) or any of its subsidiaries to Prudential and the amount of any such notes then committed to be purchased by Prudential. The A&B Note Agreement is contingent upon the consummation of the Separation and replaces a \$50 million private shelf agreement between the Company and Prudential dated April 25, 2001 and a \$400 million private shelf agreement between the Company and Prudential dated April 19, 2006, as amended.

Under the A&B Note Agreement, approximately \$207 million of existing notes, consisting of the Series A Notes, Series B Notes, Series C Notes, Series D Notes, and 2001 Notes (collectively, the "A&B Pru Notes"), will be amended or replaced in connection with the Separation. The interest rates of the A&B Pru Notes remain unchanged, but the Series AX Notes, Series BX Notes, and Series CX Notes will extend the maturity dates of the Series A Notes, Series B Notes, and Series C Notes which they replace. A summary of the terms of the amended A&B Pru Notes is as follows:

Notes	Outstanding as of June 4, 2012 (in millions)	Interest Rates	Final Maturity
Series A Notes	\$ 37.5	5.53%	2024
Series B Notes	\$ 50.0	5.55%	2026
Series C Notes	\$ 25.0	5.56%	2026
Series D Notes	\$ 90.0	6.90%	2020
2001 Notes	\$ 4.0	4.10%	2012

Interest will be paid semi-annually and the principal under the A&B Pru Notes will be repaid in annual installments, according to the following schedule (\$ in millions):

	<u>Principal Payments</u>
2012	\$ 4.0
2013	5.0
2014	5.0
2015	14.0
2016	14.0
2017	16.3
2018	17.2
2019	17.3
2020	17.3
2021	17.1
2022	18.1
2023	18.1
2024	18.1
2025	19.0
2026	6.0
Total	<u>\$ 206.5</u>

Principal negative covenants contained in the A&B Note Agreement include the requirements that:

- (a) A&B LLC's consolidated shareholders equity not be less than the sum of \$612 million plus, to the extent positive, 25 percent of consolidated net income for each fiscal quarter ended after March 31, 2012;
- (b) A&B LLC's ratio of adjusted earnings before interest, taxes, depreciation and amortization (commonly referred to as "EBITDA") to fixed charges, as defined, not be less than 1.50 to 1.00 at the end of any fiscal quarter;
- (c) A&B LLC's ratio of debt to total adjusted asset value, as defined, not be greater than 0.50 to 1.00;
- (d) A&B LLC's ratio of unencumbered income producing assets value to unsecured debt, as defined, not be less than 1.75 to 1.00; and
- (d) The aggregate principal amount of priority debt, as defined, at any time not exceed 20 percent of total adjusted asset value, as defined.

Subject to the requirements noted above, the A&B Note Agreement permits, subject to certain conditions, A&B LLC to mortgage new development properties and to place liens against existing and future developed real estate. Additionally, prepayment of amounts borrowed under the A&B Note Agreement may be made in whole or in part at par plus a yield maintenance premium, as defined.

On June 4, 2012, the Company entered into an agreement (the "A&B Revolving Credit Agreement") with First Hawaiian Bank ("FHB"), Bank of America, N.A. ("BAML"), and the other lenders party thereto, for a revolving credit facility. The A&B Revolving Credit Agreement supersedes the Company's \$230 million Credit Agreement, dated August 5, 2011, with FHB, BAML, and the other lenders party thereto.

The A&B Revolving Credit Agreement, which expires five years after the initial funding date, as defined, provides A&B LLC with an aggregate \$260 million, 5-year unsecured commitment ("A&B Senior Credit Facility"), with an uncommitted \$90 million increase option. The A&B Senior Credit Facility also provides for a \$100 million sub-limit for the issuance of standby and commercial letters of credit and a \$50 million sub-limit for swing line loans.

The A&B Senior Credit Facility is subject to commitment fees, letter of credit fees and interest on draws based on A&B LLC's ratio of total debt to total adjusted asset value ("A&B Credit Ratio"), as defined. Commitment fees and letter of credit fees are computed using rates tied to a sliding scale, which range from 0.15% to 0.35% for commitment fees and 1.50% to 2.50% for letter of credit fees, based on the A&B Credit Ratio. Interest rates on draws under the A&B Senior Credit Facility are also tied to a sliding scale of rates based on the A&B Credit Ratio, plus London Interbank Offered Rate ("LIBOR") for the applicable borrowing period. These rates range from 1.50% to 2.50% plus LIBOR. Alternatively, the Company may select an interest rate based on a "base rate option," as defined in the agreement.

Amounts drawn under the A&B Senior Credit Facility are expected to bear interest at rates ranging from 1.70% to 1.90% plus LIBOR, based on estimates of A&B's Credit Ratio. The maturity date for draws under the A&B Senior Credit Facility ranges from one week to six months, at A&B LLC's option. Amounts drawn under the swing line bear interest at a rate agreed between A&B LLC and BAML, and swing line loans mature no later than ten business days from the date of the draw.

The A&B Revolving Credit Agreement contains various restrictive covenants that are substantially the same as those contained in the A&B Note Agreement. Both the A&B Revolving Credit Agreement and the A&B Note Purchase Agreement contain customary representations and warranties and events of default.

The foregoing description of the terms of the A&B Note Agreement and the A&B Revolving Credit Agreement is qualified in its entirety by reference to the A&B Note Agreement and the A&B Revolving Credit Agreement, copies of which are filed as Exhibits 10.1 and 10.2, respectively.

#### Matson Financing

On June 4, 2012, Matson entered into an amended and restated note agreement, dated as of June 4, 2012 ("Matson Note Agreement") with The Prudential Insurance Company of America, Pruco Life Insurance Company, The Prudential Life Insurance Company, Ltd., Gibraltar Life Insurance Co. Ltd., Prudential Annuities Life Assurance Corporation and Prudential Arizona Reinsurance Universal Company, that will be assigned to and assumed by Holdings (to be renamed "Matson, Inc.") in connection with the Separation. Pursuant to the Matson Note Agreement, and subject to the satisfaction of the conditions precedent contained therein (which include consummation of the Separation), Matson, Inc. will issue new senior unsecured notes in an aggregate amount of \$170 million ("Series C Notes") and modify the existing Matson Series B Notes to effect a collateral release upon consummation of the Separation, assign Matson's obligations thereunder to Holdings, and increase the coupon for the remaining life (collectively, the "Matson, Inc. Pru Notes"). Matson and certain other subsidiaries of Holdings will become guarantors under the Matson, Inc. Pru Notes. Following the Separation, the Matson, Inc. Pru Notes and Matson's Title XI Bonds will constitute all of the outstanding Company and Matson term debt. A summary of the terms of the new and amended Matson, Inc. Pru Notes together with the Matson Title XI Bonds is as follows:

Matson, Inc. Pru Notes	Principal Amount	Interest Rate	Final Maturity
Series B Notes	\$56.0	5.79%	2020
Series C1 Notes	\$77.5	3.66%	2023
Series C2 Notes	\$55.0	4.16%	2027
Series C3 Notes	\$37.5	4.31%	2032

Matson Title XI	Principal Amount	Interest Rate	Final Maturity
Maunawili	\$38.5	5.27%	2029
Manukai	\$36.3	5.34%	2028

Interest on the Matson, Inc. Pru Notes will be paid semi-annually and the principal under the Matson, Inc. Pru Notes will be repaid in annual installments, according to the following schedule (\$ in millions):

	Principal Payments		
	Matson, Inc. Pru Notes	Matson Nav Title XI	Total
2012	\$ 3.5	\$ 2.2	\$ 5.7
2013	7.0	4.4	11.4
2014	7.0	4.4	11.4
2015	16.1	4.4	20.5
2016	16.1	4.4	20.5
2017	23.8	4.4	28.2
2018	23.8	4.4	28.2
2019	23.8	4.4	28.2
2020	20.3	4.4	24.7
2021	16.8	4.4	21.2
2022	16.8	4.4	21.2
2023	12.2	4.4	16.6
2024	7.7	4.4	12.1
2025	7.7	4.4	12.1
2026	7.7	4.4	12.1
2027	5.0	4.4	9.4
2028	2.4	4.4	6.8
2029	2.4	2.2	4.6
2030	2.4	-	2.4
2031	2.4	-	2.4
2032	1.2	-	1.2
<b>Total</b>	<b>\$ 226.0</b>	<b>\$ 74.8</b>	<b>\$ 300.8</b>

Principal negative covenants contained in the Matson Note Agreement include, but are not limited to, the requirements that Holdings:

- (a) Not permit the ratio of debt to EBITDA to exceed 3.25x for each fiscal four quarter period except for temporary one-time four quarter step-ups under certain pre-defined circumstances;
- (b) Not permit the ratio of EBITDA to interest expense as of the end of any fiscal four quarter period to be less than 3.50 to 1.00; and
- (c) Not permit the aggregate principal amount of Priority Debt, as defined in the Matson Note Agreement, at any time to exceed 20% (subject to reduction to 17.5% upon the earlier of December 31, 2017 and upon the occurrence of certain events) of Consolidated Tangible Assets, as defined in the Matson Note Agreement; and not permit the aggregate principal amount of Priority Debt that is not Title XI Priority Debt at any time to exceed 10% of Consolidated Tangible Assets, as defined in the Matson Note Agreement.

Subject to the requirements noted above, the Matson Note Agreement generally restricts the incurrence of liens except for permitted liens, including, without limitation, liens securing Title XI Debt (as defined in the Matson Note Agreement) up to certain thresholds. Additionally, prepayment of amounts borrowed under the Matson Note Agreement may be made in whole or in part at par plus a yield maintenance premium, as defined.

Approximately \$160 million of the proceeds of the new Matson, Inc. Pru Notes are anticipated to be used to repay a comparable portion of the initial borrowing under the new Matson, Inc. Revolving Credit Agreement described below.

On June 4, 2012, Matson entered into an agreement (the "Matson, Inc. Revolving Credit Agreement") with FHB, BAML and the other lenders party thereto. The Matson, Inc. Revolving Credit Agreement supersedes the Matson's \$125 million Credit Agreement dated August 5, 2011, with FHB, BAML and the other lenders party thereto (the "Matson Current Revolver"). Holdings will assume Matson's obligations and become the borrower under the Matson, Inc. Revolving Credit Agreement.

The Matson, Inc. Revolving Credit Agreement, which expires on the fifth anniversary of the initial funding thereunder, provides Holdings with an aggregate \$375 million, 5-year unsecured commitment ("Matson, Inc. Senior Credit Facility"), with an uncommitted \$75 million increase option. The Matson, Inc. Senior Credit Facility also provides for a \$100 million sub-limit for the issuance of standby and commercial letters of credit and a \$50 million sub-limit for swing line loans.

The Matson, Inc. Senior Credit Facility is subject to commitment fees, letter of credit fees and interest on draws based on Holdings' ratio of total debt to EBITDA ("Matson Leverage Ratio"), as defined therein. Commitment fees and letter of credit fees are computed using rates tied to a sliding scale, which range from 0.15% to 0.40% for commitment fees and 1.00% to 2.25% for letter of credit fees, based on the Matson Leverage Ratio. Interest rates on draws under the Matson, Inc. Senior Credit Facility are also tied to a sliding scale based on the Matson Leverage Ratio. These rates range from LIBOR plus 1.00% to LIBOR plus 2.25%. Alternatively, Holdings may select an interest rate at a Base Rate (as defined in the Matson, Inc. Senior Credit Facility) plus a margin that ranges from 0.0% to 1.25%.

Amounts drawn under the Matson, Inc. Senior Credit Facility are expected to bear interest at LIBOR plus 1.50%, provided the Company maintains a Matson Leverage Ratio of less than or equal to 2.5 to 1.0, but greater than 2.0 to 1.0. The maturity date for draws under the Matson, Inc. Senior Credit Facility ranges from one week to six months, at the Company's option. Amounts drawn under the swing line bear interest at a rate equal to the Base Rate plus the applicable margin based on the Matson Leverage Ratio and swing line loans mature no later than ten business days from the date of the draw.

The Matson, Inc. Revolving Credit Agreement contains various restrictive covenants that are substantially the same as those contained in the Matson Note Agreement.

Borrowings under the Matson, Inc. Revolving Credit Agreement are subject to certain conditions, including the execution of guaranties by Matson and certain other subsidiaries of Holdings. It is anticipated that immediately prior to the Separation, Holdings will make an initial draw of approximately \$245 million which will be used to pay off the Matson Current Revolver and fund a capital contribution to New A&B. Immediately after the consummation of the Separation, the Matson, Inc. Pru Notes are expected to be issued to pay down the Matson, Inc. Revolving Credit Facility to approximately \$75 million.

The Matson Note Agreement and the Matson, Inc. Revolving Credit Agreement both contain customary events of default.

Contemporaneously with the execution of the Matson Note Agreement and the Matson, Inc. Revolving Credit Agreement, Matson also entered into a Limited Consent with respect to the Amended and Restated Note Agreement dated as of May 19, 2005 (the "Limited Consent") and a Letter Consent with respect to the Matson Current Revolver (the "Letter Consent") authorizing various aspects of the Separation and financing arrangements.

The foregoing description of the terms of the Limited Consent, the Matson Note Agreement, the Letter Consent and the Matson, Inc. Revolving Credit Agreement is qualified in its entirety by reference to the Limited Consent, the Matson Note Agreement, the Letter Consent and the Matson, Inc. Revolving Credit Agreement, copies of which are filed as Exhibits 10.3 through 10.6, respectively.

### **Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth under the headings "A&B Financing" and "Matson Financing" in Item 2.01 is incorporated herein by reference.

### **Item 8.01 Other Events**

On June 7, 2012, Holdings issued a press release relating to the Merger and the the Company financing and Matson issued a press release relating to its financing. Copies of these press release are attached hereto as Exhibits 99.1 and 99.2, respectively, and are incorporated herein by reference.

### **Item 9.01 Financial Statements and Exhibits.**

#### **(d) Exhibits**

Exhibit No.	Exhibit

- 10.1 Amended and Restated Note Purchase and Private Shelf Agreement among Alexander & Baldwin, Inc., Prudential Investment Management, Inc. and the other purchasers party thereto, dated as of June 4, 2012.
- 10.2 Credit Agreement between Alexander & Baldwin, Inc., First Hawaiian Bank, Bank of America, N.A. and the other lenders party thereto, dated as of June 4, 2012.
- 10.3 Letter Consent with respect to the Credit Agreement dated as of August 5, 2011 among First Hawaiian Bank, as Agent, and the other Lenders party thereto and Matson Navigation Company, Inc., dated of June 4, 2012.
- 10.4 Second Amended and Restated Note Agreement among Matson Navigation Company, Inc., Prudential Investment Management, Inc. and the other purchasers party thereto, dated as of June 4, 2012.
- 10.5 Limited Consent – Amended and Restated Note Agreement between Matson Navigation Company and The Prudential Insurance Company of America and Pruco Life Insurance Company, dated as of June 4, 2012.
- 10.6 Credit Agreement between Matson Navigation Company, Inc., First Hawaiian Bank, Bank of America, N.A. and the other lenders party thereto, dated as of June 4, 2012.
- 99.1 Press Release of Alexander & Baldwin Holdings, Inc. dated June 7, 2012.
- 99.2 Press Release of Matson Navigation Company, Inc. dated June 7, 2012.
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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ALEXANDER & BALDWIN, INC.

/s/ Joel M. Wine

Joel M. Wine  
Senior Vice President,  
Chief Financial Officer and Treasurer

Dated: June 7, 2012

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## Exhibit Index

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10.1	Amended and Restated Note Purchase and Private Shelf Agreement among Alexander & Baldwin, Inc., Prudential Investment Management, Inc. and the other purchasers party thereto, dated as of June 4, 2012.
10.2	Credit Agreement between Alexander & Baldwin, Inc., First Hawaiian Bank, Bank of America, N.A. and the other lenders party thereto, dated as of June 4, 2012.
10.3	Letter Consent with respect to the Credit Agreement dated as of August 5, 2011 among First Hawaiian Bank, as Agent, and the other Lenders party thereto and Matson Navigation Company, Inc., dated of June 4, 2012.
10.4	Second Amended and Restated Note Agreement among Matson Navigation Company, Inc., Prudential Investment Management, Inc. and the other purchasers party thereto, dated as of June 4, 2012.
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10.6	Credit Agreement between Matson Navigation Company, Inc., First Hawaiian Bank, Bank of America, N.A. and the other lenders party thereto, dated as of June 4, 2012.
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**ALEXANDER & BALDWIN, INC. (to be converted into a limited liability company named ALEXANDER & BALDWIN, LLC)**

AMENDED AND RESTATED NOTE PURCHASE AND PRIVATE SHELF AGREEMENT

June 4, 2012

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## **Schedules and Exhibits**

### Information Schedule

#### Purchaser Schedules (Relating to Notes Other Than Shelf Notes)

Exhibit A-1	--	Form of Series AX Note
Exhibit A-2	--	Form of Series BX Note
Exhibit A-3	--	Form of Series CX Note
Exhibit A-4	--	Form of Shelf Note
Exhibit B	--	Form of Request for Purchase
Exhibit C	--	Form of Confirmation of Acceptance
Exhibit D	--	Form of Joinder Agreement
Schedule 1B	--	Corporate Organization Chart
Schedule 6B(1)	--	Existing Liens on Initial Closing Date

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**ALEXANDER & BALDWIN, INC. (to be converted into a limited liability company named ALEXANDER & BALDWIN, LLC)**

822 Bishop Street

Honolulu, Hawaii 96801-3440

As of June 4, 2012

Prudential Investment Management, Inc.  
Each Prudential Affiliate which is a signatory hereof  
or hereafter becomes bound by certain provisions hereof as hereinafter provided

c/o Prudential Capital Group  
2029 Century Park East, Suite 710  
Los Angeles, CA 90067

Ladies and Gentlemen:

The undersigned, Alexander & Baldwin, Inc., a Hawaii corporation to be converted into a limited liability company named Alexander & Baldwin, LLC pursuant to the Conversion described in paragraph 1B (the "**Company**"), hereby agrees with you as follows:

**1. BACKGROUND; AUTHORIZATION OF ISSUE OF NOTES.**

**1A. Amendment and Restatement of Certain Agreements.** This Agreement amends, restates and replaces in their entirety (i) that certain Private Shelf Agreement, dated as of April 25, 2001 (as amended, restated, supplemented or otherwise modified, the "**2001 Agreement**"), by and between the Company, on the one hand, and the Purchasers party thereto, on the other hand, and (ii) that certain Note Purchase and Private Shelf Agreement, dated as of April 19, 2006 (as amended, restated, supplemented or otherwise modified, the "**2006 Agreement**"), by and between the Company, on the one hand, and the Purchasers party thereto, on the other hand.

Certain capitalized terms used in this Agreement are defined in paragraph 10; references to a "paragraph" are, unless otherwise specified, to one of the paragraphs of this Agreement, and references to an "Exhibit" or "Schedule" are, unless otherwise specified, to one of the exhibits or schedules to this Agreement.

**1B. Reorganization and Consent Thereto.** The Company has proposed to effect a reorganization pursuant to which:

(i) the Company has incorporated Alexander & Baldwin Holdings, Inc., a Hawaii corporation subsequently to be re-named "Matson, Inc." as described in clause (iv) of this paragraph 1B ("**A&B Holdings**"), as a new, wholly-owned direct Subsidiary of the Company, and A&B Holdings has incorporated A&B Merger Corporation, a Hawaii corporation ("**A&B Merger Corp.**"), as a new, wholly-owned direct Subsidiary of A&B Holdings, and, on or about June 5, 2012 A&B Merger Corp. will merge with and into the Company with the Company being the survivor of such merger (the "**Merger**"), after giving effect to which A&B Holdings will hold all of the capital stock of the Company and the stockholders of A&B Holdings will be the Persons who were the stockholders of the Company immediately prior to giving effect to the Merger;

(ii) on the Business Day immediately succeeding consummation of the Merger, the Company will convert into a Hawaii limited liability company to be named "Alexander & Baldwin, LLC" pursuant to applicable Hawaii law (the "**Conversion**") and will thereafter on such Business Day distribute all of the capital stock of Matson to A&B Holdings (the "**Distribution**"), after giving effect to which Matson will be a sister of the Company and a direct, wholly-owned Subsidiary of A&B Holdings;

(iii) on the Business Day immediately succeeding consummation of the Merger and after consummation of the Distribution, A&B Holdings will contribute all of the membership interests in the Company to A & B II, Inc., a Hawaii corporation subsequently to be re-named "Alexander & Baldwin, Inc." ("**New A&B**" or "**Holdings**"), a newly formed, wholly-owned direct Subsidiary of A&B Holdings (the "**Contribution**"), after giving effect to which the direct parent and holder of all of the membership interests in the Company will be New A&B, and the direct parent and holder of all of the capital stock of both Matson and New A&B will be A&B Holdings; and

(iv) after consummation of the Contribution and after the close of the New York Stock Exchange on June 29, 2012, A&B Holdings will distribute all of the capital stock of New A&B to the public stockholders of A&B Holdings (the "**Spin-Off**"), concurrent with which the name change of A&B Holdings to "Matson, Inc." will become effective (the collective transactions described in the foregoing portions of this paragraph 1B being referred to herein as the "**Reorganization**").

The Company represents and warrants that (a) the foregoing portions of this paragraph 1B constitute an accurate description of the material steps of the Reorganization and the sequence of such steps, and (b) the organization chart set forth in Schedule 1B (to the extent of the detail set forth therein) accurately depicts the organizational structure of A&B Holdings, Matson, New A&B and the Company immediately after giving effect to the Reorganization.

Subject to the Reorganization being consummated in accordance with applicable law, and in reliance on the representations and warranties in the immediately preceding sentence, the Purchasers hereby consent to the consummation of the Distribution, provided that an Event of Default shall exist under each of the 2001 Agreement and the 2006 Agreement if (a) the Reorganization is consummated (or if any other transaction or series of transactions is consummated, after giving effect to which Matson and its Subsidiaries are no longer wholly-owned Subsidiaries of the Company) and (b) the Initial Closing does not occur concurrently with the Reorganization (or such other transaction or series of transactions) for any reason.

**1C. Existing Notes.** Pursuant to the terms of the 2001 Agreement, the Company has issued its 4.10% senior notes due July 21, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "**2001 Agreement Notes**") in the original aggregate principal amount of \$35,000,000 (\$4,000,000 aggregate principal amount of which is currently outstanding). Pursuant to the terms of the 2006 Agreement, the Company has issued (i) its

5.53% senior notes due December 20, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “**Series A Notes**”) in the original aggregate principal amount of \$50,000,000 (\$37,500,000 aggregate principal amount of which is currently outstanding), (ii) its 5.55% senior notes due March 20, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the “**Series B Notes**”) in the original aggregate principal amount of \$50,000,000 (all of which is currently outstanding), (iii) its 5.56% senior notes due June 20, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “**Series C Notes**”) in the original aggregate principal amount of \$25,000,000 (all of which is currently outstanding), and (iv) its 6.90% senior notes due March 9, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the “**Series D Notes**”) in the original aggregate principal amount of \$100,000,000 (\$90,000,000 aggregate principal amount of which is currently outstanding). The terms “**2001 Agreement Note**” and “**2001 Agreement Notes**” as used herein shall include each 2001 Agreement Note delivered pursuant to any provision of the 2001 Agreement and each 2001 Agreement Note delivered in substitution or exchange therefor pursuant to any provision of the 2001 Agreement or this Agreement. The terms “**Series A Note**,” “**Series A Notes**,” “**Series B Note**,” “**Series B Notes**,” “**Series C Note**,” “**Series C Notes**,” “**Series D Note**” and “**Series D Notes**” as used herein shall include, as applicable, each Series A Note, Series B Note, Series C Note or Series D Note delivered pursuant to any provision of the 2006 Agreement and each Series A Note, Series B Note, Series C Note or Series D Note, as applicable, delivered in substitution or exchange therefor pursuant to any provision of the 2006 Agreement.

**1D. Authorization of Issue of Series AX Notes, Series BX Notes and Series CX Notes.** The Company has authorized the issuance of (i) its 5.53% senior promissory notes (the “**Series AX Notes**”) in the aggregate principal amount of \$37,500,000, to be dated the date of issue thereof and to mature July 25, 2024, (ii) its 5.55% senior promissory notes (the “**Series BX Notes**”) in the aggregate principal amount of \$50,000,000, to be dated the date of issue thereof and to mature January 25, 2026 and (iii) its 5.56% senior promissory notes (the “**Series CX Notes**”) in the aggregate principal amount of \$25,000,000, to be dated the date of issue thereof and to mature July 25, 2026. The Series AX Notes shall be substantially in the form of Exhibit A-1, the Series BX Notes shall be substantially in the form of Exhibit A-2 and the Series CX Notes shall be substantially in the form of Exhibit A-3. The terms “**Series AX Note**,” “**Series AX Notes**,” “**Series BX Note**,” “**Series BX Notes**,” “**Series CX Note**” and “**Series CX Notes**” as used herein shall include, as applicable, each Series AX Note, Series BX Note or Series CX Note delivered pursuant to any provision of this Agreement and each Series AX Note, Series BX Note or Series CX Note, as applicable, delivered in substitution or exchange therefor pursuant to any such provision.

**1E. Authorization of Issue of Shelf Notes.** The Company may authorize the issue of its senior promissory notes (as amended, restated, supplemented or otherwise modified from time to time, the “**Shelf Notes**”), to be dated the date of issue thereof, to mature, in the case of each Shelf Note so issued, no more than sixteen years from the date of original issuance, to have an average life, in the case of each Shelf Note so issued, of no more than sixteen years, to bear interest on the unpaid balance thereof from the date thereof at the rate per annum, and to have such other particular terms, as shall be set forth, in the case of each Shelf Note so issued, in the Confirmation of Acceptance with respect to such Shelf Note delivered pursuant to paragraph 2B(5), and to be substantially in the form of Exhibit A-4. The terms “**Shelf Note**” and “**Shelf Notes**” as used herein shall include each Shelf Note delivered pursuant to any provision of this Agreement and each Shelf Note delivered in substitution or exchange for any such Shelf Note pursuant to any such provision. The terms “**Note**” and “**Notes**” as used herein shall include each 2001 Agreement Note, each Series AX Note, each Series BX Note, each Series CX Note, each Series D Note and each Shelf Note delivered pursuant to any provision of the 2001 Agreement, the 2006 Agreement or this Agreement, as applicable, and each Note delivered in substitution or exchange for any such Note pursuant to any such provision. Notes which have (i) the same final maturity, (ii) the same principal prepayment dates, (iii) the same principal prepayment amounts (as a percentage of the original principal amount of each Note), (iv) the same interest rate, (v) the same interest payment periods and (vi) the same date of issuance (which, in the case of a Note issued in exchange for another Note, shall be deemed for these purposes the date on which such Note’s ultimate predecessor Note was issued), are herein called a “**Series**” of Notes.

## **2. PURCHASE AND SALE OF NOTES.**

### **2A. Purchase and Sale of Series AX, BX and CX Notes; Modification of Series D Notes.**

**2A(1). Purchase and Sale of Series AX, BX and CX Notes.** Subject to the terms and conditions herein set forth, the Company hereby agrees to sell to the Series AX, BX and CX Purchasers, and each Series AX, BX and CX Purchaser agrees to purchase from the Company, the aggregate principal amount of Series AX, BX and CX Notes set forth opposite its name on the Purchaser Schedule attached hereto at 100% of such aggregate principal amount. On the Initial Closing Day, the Company will deliver to each Series AX, BX and CX Purchaser (as applicable) at the offices of Bingham McCutchen LLP, Three Embarcadero Center, Suite 2700, San Francisco, CA 94111, one or more Series AX, BX or CX Notes (as applicable) registered in its name, evidencing the aggregate principal amount of Series AX, BX and CX Notes to be purchased by it and in the denomination or denominations specified with respect to such Purchaser for such Notes in the Purchaser Schedule attached hereto, in exchange for a like outstanding aggregate principal amount of Series A, B or C Notes (as applicable) then held by such Series AX, BX and CX Purchaser. Upon such sale and purchase of the Series AX, BX and CX Notes in exchange for the outstanding Series A, B and C Notes, all outstanding Series A, B and C Notes will be deemed to be cancelled without further action of any Person. All such cancelled Series A, B and C Notes shall be returned to the Company promptly following the Initial Closing Day.

### **2B. Purchase and Sale of Shelf Notes.**

**2B(1). Facility.** Prudential is willing to consider, in its sole discretion and within limits which may be authorized for purchase by Prudential and Prudential Affiliates from time to time, the purchase of Shelf Notes pursuant to this Agreement. The willingness of Prudential to consider such purchase of Shelf Notes is herein called the “**Facility**”. At any time, (i) \$300,000,000, minus (ii) the aggregate principal amount of the Notes then outstanding and all other notes issued and sold under this or any other agreement by Holdings, the Company or any Subsidiary and held by Prudential or any Prudential Affiliate which are then outstanding, minus (iii) the aggregate principal amount of Accepted Notes (as hereinafter defined) which have not yet been purchased and sold hereunder prior to such time, is herein called the “**Available Facility Amount**” at such time. **NOTWITHSTANDING THE WILLINGNESS OF PRUDENTIAL TO CONSIDER PURCHASES OF SHELF NOTES, THIS AGREEMENT IS ENTERED INTO ON THE EXPRESS UNDERSTANDING THAT NEITHER PRUDENTIAL NOR ANY PRUDENTIAL AFFILIATE SHALL BE OBLIGATED TO MAKE OR ACCEPT OFFERS TO PURCHASE SHELF NOTES, OR TO QUOTE RATES, SPREADS OR OTHER TERMS WITH RESPECT TO SPECIFIC PURCHASES OF SHELF NOTES, AND THE FACILITY SHALL IN NO WAY BE CONSTRUED AS A COMMITMENT BY PRUDENTIAL OR ANY PRUDENTIAL AFFILIATE.** Notwithstanding anything to the contrary appearing herein, in no event shall any Note be purchased under the Facility by a Prudential Affiliate described in clause (i) of the definition thereof if, upon giving effect to such purchase and the use of proceeds thereof, the aggregate principal amount of all Notes and any other notes of the Company then outstanding and held by all Prudential Affiliates described in such clause, would exceed \$250,000,000.

**2B(2). Issuance Period.** Shelf Notes may be issued and sold pursuant to this Agreement until the earlier of (i) the third anniversary of the Initial Closing Day (or if such anniversary is not a Business Day, the Business Day next preceding such anniversary) and (ii) the thirtieth day after Prudential shall have given to the Company, or the Company shall have given to Prudential, a written notice stating that it elects to terminate the issuance and sale of Shelf



Notes pursuant to this Agreement (or if such thirtieth day is not a Business Day, the Business Day next preceding such thirtieth day). The period during which Shelf Notes may be issued and sold pursuant to this Agreement is herein called the “**Issuance Period**”.

**2B(3). Request for Purchase.** The Company may from time to time following the Initial Closing Day and during the Issuance Period make requests for purchases of Shelf Notes (each such request being herein called a “**Request for Purchase**”). Each Request for Purchase shall be made to Prudential by telefacsimile or overnight delivery service, and shall (i) specify the aggregate principal amount of Shelf Notes covered thereby, which shall not be less than \$5,000,000 and not be greater than the Available Facility Amount at the time such Request for Purchase is made, (ii) specify the principal amounts, final maturities, principal prepayment dates and amounts and interest payment periods (quarterly or semiannual in arrears) of the Shelf Notes covered thereby, (iii) specify the use of proceeds of such Shelf Notes, (iv) specify the proposed day for the closing of the purchase and sale of such Shelf Notes, which shall be a Business Day during the Issuance Period not less than 5 Business Days after the making of such Request for Purchase, (v) specify the number of the account and the name and address of the depository institution to which the purchase price of such Shelf Notes is to be transferred on the Closing Day for such purchase and sale, (vi) certify that the representations and warranties contained in paragraph 8 are true on and as of the date of such Request for Purchase and that there exists on the date of such Request for Purchase no Event of Default or Default, and (vii) be substantially in the form of Exhibit B. Each Request for Purchase shall be in writing and shall be deemed made when received by Prudential.

**2B(4). Rate Quotes.** Not later than five Business Days after the Company shall have given Prudential a Request for Purchase pursuant to paragraph 2B(3), Prudential may, but shall be under no obligation to, provide to the Company by telephone or telefacsimile, in each case between 9:30 a.m. and 2:00 p.m. New York City local time (or such later time as Prudential may elect) interest rate quotes for the several principal amounts, maturities, principal prepayment schedules, and interest payment periods of Shelf Notes specified in such Request for Purchase. Each quote shall represent the interest rate per annum payable on the outstanding principal balance of such Shelf Notes at which Prudential or a Prudential Affiliate would be willing to purchase such Shelf Notes at 100% of the principal amount thereof.

**2B(5). Acceptance.** Within two minutes after Prudential shall have provided any interest rate quotes pursuant to paragraph 2B(4), or such shorter period as Prudential may specify to the Company (such period herein called the “**Acceptance Window**”), the Company may, subject to paragraph 2B(6), elect to accept such interest rate quotes as to not less than \$5,000,000 aggregate principal amount of the Shelf Notes specified in the related Request for Purchase. Such election shall be made by an Authorized Officer of the Company notifying Prudential by telephone or telefacsimile within the Acceptance Window that the Company elects to accept such interest rate quotes, specifying the financial terms referred to in clause (ii) of paragraph 2B(3) with respect to such Shelf Notes (each such Note being herein called an “**Accepted Note**”) as to which such acceptance (herein called an “**Acceptance**”) relates. The day the Company notifies an Acceptance with respect to any Accepted Notes is herein called the “**Acceptance Day**” for such Accepted Notes. Any interest rate quotes as to which Prudential does not receive an Acceptance within the Acceptance Window shall expire, and no purchase or sale of Shelf Notes hereunder shall be made based on such expired interest rate quotes. Subject to paragraph 2B(6) and the other terms and conditions hereof, the Company agrees to sell to Prudential or a Prudential Affiliate, and Prudential agrees to purchase, or to cause the purchase by a Prudential Affiliate of, the Accepted Notes at 100% of the principal amount of such Shelf Notes. As soon as practicable following the Acceptance Day, the Company and each Prudential Affiliate which is to purchase any such Accepted Notes will execute a confirmation of such Acceptance substantially in the form of Exhibit C (herein called a “**Confirmation of Acceptance**”). If the Company should fail to execute and return to Prudential within three Business Days following receipt thereof from Prudential of a Confirmation of Acceptance with respect to any Accepted Notes, Prudential may at its election at any time prior to its receipt thereof cancel the closing with respect to such Accepted Notes by so notifying the Company in writing.

**2B(6). Market Disruption.** Notwithstanding the provisions of paragraph 2B(5), if Prudential shall have provided interest rate quotes pursuant to paragraph 2B(4) and thereafter prior to the time an Acceptance with respect to such quotes shall have been notified to Prudential in accordance with paragraph 2B(5) the domestic market for U.S. Treasury securities or derivatives shall have closed or there shall have occurred a general suspension, material limitation, or significant disruption of trading in securities generally on the New York Stock Exchange or in the domestic market for U.S. Treasury securities or derivatives, then such interest rate quotes shall expire, and no purchase or sale of Notes hereunder shall be made based on such expired interest rate quotes. If the Company thereafter notifies Prudential of the Acceptance of any such interest rate quotes, such Acceptance shall be ineffective for all purposes of this Agreement, and Prudential shall promptly notify the Company that the provisions of this paragraph 2B(6) are applicable with respect to such Acceptance.

**2C. Closings.** Not later than 1:30 p.m. (New York City local time) on the Closing Day for any Accepted Notes, the Company will deliver to each Purchaser listed on the Purchaser Schedule relating thereto at the offices of Prudential Capital Group the Accepted Notes to be purchased by such Purchaser on such Closing Day in the form of one or more Notes in authorized denominations as such Purchaser may request, dated the applicable Closing Day and registered in such Purchaser’s name (or in the name of its nominee), against payment of the purchase price thereof by transfer of immediately available funds for credit to the account specified by the Company herein or in the Request for Purchase relating to such Notes. If the Company fails to tender to any Purchaser the Accepted Notes to be purchased by such Purchaser on the scheduled Closing Day for such Notes as provided above, or any of the conditions specified in paragraph 3B shall not have been fulfilled by the time required on such scheduled Closing Day, the Company shall, prior to 2:30 p.m., New York City local time, on such scheduled Closing Day notify Prudential (which notification shall be deemed received by each Purchaser) in writing whether (i) such closing is to be rescheduled (such rescheduled date to be a Business Day during the Issuance Period not less than one Business Day and not more than thirty days after such scheduled Closing Day (the “**Rescheduled Closing Day**”) and certify to Prudential (which certification shall be for the benefit of each Purchaser) that the Company reasonably believes that it will be able to comply with the conditions set forth in paragraph 3B on such Rescheduled Closing Day and that the Company will pay the Delayed Delivery Fee in accordance with paragraph 2D(iii) or (ii) such closing is to be canceled. In the event that the Company shall fail to give such notice referred to in the preceding sentence, Prudential (on behalf of each Purchaser) may at its election, at any time after 2:30 p.m., New York City local time, on such scheduled Closing Day, notify the Company in writing that such closing is to be canceled. Notwithstanding anything to the contrary appearing in this Agreement, the Company may not elect to reschedule a closing with respect to any Notes on more than one occasion, unless Prudential shall have otherwise consented in writing.

## **2D. Fees.**

**2D(i). [Intentionally Omitted].**

**2D(ii). Shelf Notes Issuance Fee.** The Company agrees to pay to each Purchaser of Shelf Notes in immediately available funds a fee (herein called the “**Issuance Fee**”) on each Closing Day for the purchase and sale of Shelf Notes in an amount equal to 0.10% of the aggregate principal amount of Shelf Notes sold to such Purchaser on such Closing Day.

**2D(iii). Delayed Delivery Fee.** If the closing of the purchase and sale of any Accepted Notes is delayed for any reason beyond the original Closing Day therefor, the Company agrees to pay to (or as directed by) Prudential on the Cancellation Date or actual closing date of such purchase and sale, a

fee (herein called the “**Delayed Delivery Fee**”) calculated as follows:

$$(BEY - MMY) \times DTS/360 \times PA$$

where “**BEY**” means Bond Equivalent Yield, *i.e.*, the bond equivalent yield per annum of such Note, “**MMY**” means Money Market Yield, *i.e.*, the yield per annum on a commercial paper investment of the highest quality selected by Prudential on the date Prudential receives notice of the delay in the closing for such Note having a maturity date or dates the same as, or closest to, the Rescheduled Closing Day (a new alternative investment being selected by Prudential each time such closing is delayed); “**DTS**” means Days to Settlement, *i.e.*, the number of actual days elapsed from and including the original Closing Day with respect to such Note to but excluding the date of such payment; and “**PA**” means Principal Amount, *i.e.*, the principal amount of the Accepted Note for which such calculation is being made. In no case shall the Delayed Delivery Fee be less than zero. Nothing contained herein shall obligate any Purchaser to purchase any Accepted Note on any day other than the original Closing Day for such Note, as the same may be rescheduled from time to time in compliance with paragraph 2C. Notwithstanding the foregoing, no Delayed Delivery Fee shall be payable in connection with the closing of the purchase and sale of any Series of Notes if all of the conditions precedent set forth in paragraph 3 (other than the condition precedent in paragraph 3B(3)) have been timely satisfied on or prior to the original Closing Day therefor and any relevant Purchaser fails to purchase any such Notes on such Closing Day.

**2D(iv). Cancellation Fee.** If the Company at any time notifies Prudential in writing that the Company is canceling the closing of the purchase and sale of any Accepted Notes, or if Prudential notifies the Company in writing under the circumstances set forth in the penultimate sentence of paragraph 2C that the closing of the purchase and sale of any Accepted Notes is to be canceled (or under the circumstances set forth in the last sentence of paragraph 2B(5) that the purchase and sale of any Accepted Notes is to be cancelled), or if the closing of the purchase and sale of any Series of Notes is not consummated on or prior to the last day of the Issuance Period (the date of any such notification, or the last day of the Issuance Period, as the case may be, being herein called the “**Cancellation Date**”), the Company agrees to pay to Prudential in immediately available funds an amount (the “**Cancellation Fee**”) calculated as follows:

$$PI \times PA$$

where “**PI**” means Price Increase, *i.e.*, the quotient (expressed in decimals) obtained by dividing (a) the excess of the ask price (as determined by Prudential) of the Hedge Treasury Note(s) on the Cancellation Date over the bid price (as determined by Prudential) of the Hedge Treasury Notes(s) on the date the interest rate was locked on the Acceptance Day for such Accepted Notes (as applicable) by (b) such applicable bid price; and “**PA**” has the meaning ascribed to it in paragraph 2D(iii). The foregoing bid and ask prices shall be as reported by such publicly available source of such market data as is then customarily utilized by Prudential. Each price shall be based on a U.S. Treasury security having a par value of \$100.00 and shall be rounded to the second decimal place. In no case shall the Cancellation Fee be less than zero. Notwithstanding the foregoing, no Cancellation Fee shall be due in connection with any proposed purchase and sale of any Shelf Notes if all of the conditions precedent set forth in paragraph 3 (other than the condition precedent in paragraph 3B(3)) have been timely satisfied on or prior to the applicable Closing Day therefor and any relevant Purchaser fails to purchase any such Notes on such Closing Day.

### 3. CONDITIONS OF CLOSING.

**3A. Conditions - Initial Closing Day.** Each of (i) the effectiveness of this Agreement (other than the consent provided in paragraph 1B, which is subject only to the conditions set forth in paragraph 1B) and the amendment and restatement of the 2001 Agreement and the 2006 Agreement effected hereby, and (ii) the obligation of each Series AX Purchaser, Series BX Purchaser and Series CX Purchaser to purchase the Series AX Notes, Series BX Notes or Series CX Notes to be purchased by such Purchaser is subject to the satisfaction, on or before August 19, 2012, of the following conditions:

**3A(1). Certain Documents.** Each existing Purchaser and Prudential shall have received the following, each dated the Initial Closing Day (unless otherwise specified):

- (i) Joinder Agreements, made by Holdings and any Subsidiaries of Holdings (other than the Company) which are guarantors or other obligors under any Principal Credit Facility as of the Initial Closing Day;
- (ii) a copy of the Separation Agreement, any agreements or supplements thereto and all other agreements entered into in connection therewith, each certified by a Responsible Officer of the Company as true and complete copies thereof, which documents shall be reasonably satisfactory to such Purchaser.

**3A(2). Modification of Existing Matson Financing.** The existing financing under the Prior Agreement (as defined in the Matson Note Agreement) shall have been modified pursuant to the Matson Note Agreement in a manner reasonably acceptable to Prudential.

**3A(3). Material Adverse Change.** With the exception of the Distribution, no material adverse change in the condition (financial or otherwise) or prospects of the Company and its Subsidiaries, taken as a whole, since December 31, 2011 shall have occurred.

**3A(4). Reorganization Transactions.** Each existing Purchaser and Prudential shall have received satisfactory evidence: (a) that each of the Merger, the Conversion, the Distribution, the Contribution and the Spin-Off has occurred as set forth in paragraph 1B; and (b) that all necessary internal, shareholder, bank facility, regulatory and third-party approvals and consents in connection with the Reorganization have been obtained (and each Purchaser shall have received an Officer’s Certificate, dated the Initial Closing Day, executed by each of Holdings and the Company, to such effect).

**3A(5). Bank Credit Agreement.** The Bank Credit Agreement (as defined in the 2006 Agreement) shall have been terminated and all obligations thereunder repaid in full, and the Company shall have entered into the Bank Credit Agreement (as defined herein) with an aggregate commitment in excess of \$200,000,000, a maturity of at least three years and terms and conditions reasonably satisfactory to such Purchaser, a copy of which (with all exhibits and schedules thereto) having been delivered to each existing Purchaser and Prudential and certified by a Responsible Officer as of the Initial Closing Day as being a true and complete copy thereof.

**3A(6). Capital Contribution.** Prior to consummation of the Spin-Off, A&B Holdings shall have made a capital contribution to New A&B pursuant to the terms of the Separation Agreement in the amount of at least \$160,000,000.

**3A(7). Payment of Interest.** The Company shall have paid to the holders of the Series A Notes, the Series B Notes and the Series C Notes their ratable shares of all accrued and unpaid interest in respect of such notes through and including the day immediately preceding the Initial Closing Day.

**3A(8). Fees and Expenses.** Without limiting the provisions of paragraph 12B hereof, the Company shall have paid: (i) to the existing Purchasers their ratable share of an amendment fee in the aggregate amount of \$100,000, (ii) to the holders of the Series D Notes a one-time credit adjustment fee in the aggregate amount of \$858,600; and (iii) the reasonable fees, charges and disbursements of special counsel to the Purchasers to the extent invoiced by no later than one (1) day prior to the Initial Closing Day.

**3B. Conditions - Each Closing Day.** The obligation of any Purchaser to purchase and pay for any Notes (whether on the Initial Closing Day or any Closing Day for the purchase and sale of any Shelf Notes) is subject to the satisfaction, on or before such Closing Day, of the following conditions:

**3B(1). Certain Documents.** Such Purchaser shall have received the following, each dated the date of the applicable Closing Day:

- (i) the Note(s) to be purchased by such Purchaser.
- (ii) certified copies of the resolutions of the board of directors (or similar authorizing body) of each of the Credit Parties authorizing the execution and delivery of this Agreement, the Multiparty Guaranty and (in the case of the Company) the issuance of such Notes, and of all documents evidencing other necessary corporate or other action and governmental approvals, if any, with respect to this Agreement, the Multiparty Guaranty and such Notes.
- (iii) a certificate of the Secretary or an Assistant Secretary and one other officer of each Credit Party certifying the names and true signatures of the officers of such Person authorized to sign this Agreement, the Multiparty Guaranty and such Notes and the other documents to be delivered hereunder.
- (iv) certified copies of the articles of incorporation and bylaws (or similar constitutive documents) of each Credit Party.
- (v) a favorable opinion of (a) Skadden, Arps, Slate, Meagher & Flom LLP, dated the applicable Closing Day, satisfactory to such Purchaser, and (b) the Chief Legal Officer of the Credit Parties or such other counsel of the Credit Parties designated by the Company and acceptable to such Purchaser, dated the applicable Closing Day, satisfactory to such Purchaser.
- (vi) a good standing certificate for each Credit Party from such Person's jurisdiction of organization, in each case dated as of a recent date and such other evidence of the status of such Credit Party as such Purchaser may reasonably request.
- (vii) additional documents or certificates with respect to legal matters or corporate or other proceedings related to the transactions contemplated hereby as may be reasonably requested by such Purchaser.

**3B(2). Representations and Warranties; No Default.** The representations and warranties contained in paragraph 1B and paragraph 8 and in each other Transaction Document shall be true in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect which such representation and warranty shall be true and correct in all respects) on and as of such Closing Day; there shall exist on such Closing Day no Event of Default or Default; and the Company shall have delivered to such Purchaser an Officer's Certificate, dated such Closing Day, executed by a Responsible Officer of each of Holdings and the Company, to both such effects.

**3B(3). Purchase Permitted by Applicable Laws.** The purchase of and payment for the Notes to be purchased by such Purchaser on the terms and conditions herein provided (including the use of the proceeds of such Notes by the Company) shall not violate any applicable law or governmental regulation (including, without limitation, Section 5 of the Securities Act or Regulation T, U or X of the Board of Governors of the Federal Reserve System) and shall not subject such Purchaser to any tax, penalty, liability or other onerous condition under or pursuant to any applicable law or governmental regulation, and such Purchaser shall have received such certificates or other evidence as it may request to establish compliance with this condition. This paragraph 3B(3) is a closing condition and shall not be construed as a tax indemnity.

**3B(4). Payment of Fees.** The Company shall have paid to Prudential and each Purchaser any fees due it pursuant to or in connection with this Agreement, including any Issuance Fee due pursuant to paragraph 2D(ii) and any Delayed Delivery Fee due pursuant to paragraph 2D(iii).

**4. PREPAYMENTS.** The Notes shall be subject to scheduled required prepayment as and to the extent provided in paragraph 4A. The Notes shall also be subject to prepayment under the circumstances set forth in paragraph 4B.

**4A(1). Required Prepayment of Series AX Notes.** Until the Series AX Notes have been paid in full, the Company shall prepay the Series AX Notes, without Yield Maintenance Amount, in the amount of \$6,000,000 on July 25, 2015, \$3,000,000 on July 25, 2016, \$7,125,000 on July 25, 2021, \$7,125,000 on July 25, 2022, and \$7,125,000 on July 25, 2023, and such principal amount of the Series AX Notes, together with interest thereon to the payment dates, shall become due on such payment dates. The remaining principal amount of the Series AX Notes, together with interest accrued thereon, shall become due on the maturity date of the Series AX Notes.

**4A(2). Required Prepayment of Series BX Notes.** Until the Series BX Notes have been paid in full, the Company shall prepay the Series BX Notes, without Yield Maintenance Amount, in the amount of \$3,000,000 on January 25, 2015, \$1,000,000 on January 25, 2016, \$1,000,000 on January 25, 2021, \$9,000,000 on January 25, 2022, \$9,000,000 on January 25, 2023, \$9,000,000 on January 25, 2024, and \$16,000,000 on January 25, 2025, and such principal amount of the Series BX Notes, together with interest thereon to the payment dates, shall become due on such payment dates. The remaining principal amount of the Series BX Notes, together with interest accrued thereon, shall become due on the maturity date of the Series BX Notes.

**4A(3). Required Prepayment of Series CX Notes.** Until the Series CX Notes have been paid in full, the Company shall prepay the Series CX Notes, without Yield Maintenance Amount, in the amount of \$1,000,000 on July 25, 2018, \$1,000,000 on July 25, 2019, \$1,000,000 on July 25, 2020, \$9,000,000 on July 25, 2021, \$2,000,000 on July 25, 2022, \$2,000,000 on July 25, 2023, \$2,000,000 on July 25, 2024, and \$3,000,000 on July 25, 2025, and such principal amount of the Series CX Notes, together with interest thereon to the payment dates, shall become due on such payment dates. The remaining principal amount of the Series CX Notes, together with interest accrued thereon, shall become due on the maturity date of the Series CX Notes.

**4A(4). Required Prepayments of Other Notes.** The 2001 Agreement Notes, the Series D Notes and each Series of Shelf Notes shall be subject to required prepayments, if any, set forth in the Notes of such Series.

**4B. Optional Prepayment With Yield-Maintenance Amount.** The Notes of each Series shall be subject to prepayment, in whole at any time or from time to time in part (in integral multiples of \$100,000 and in a minimum amount of \$1,000,000), at the option of the Company, at 100% of the principal amount so prepaid plus interest thereon to the prepayment date and the Yield-Maintenance Amount, if any, with respect to each such Note. Any partial prepayment of a Series of the Notes pursuant to this paragraph 4B shall be applied in satisfaction of required payments of principal in inverse order of their scheduled due dates.

**4C. Notice of Optional Prepayment.** The Company shall give the holder of each Note of a Series to be prepaid pursuant to paragraph 4B irrevocable written notice of such prepayment not less than 3 Business Days prior to the prepayment date, specifying such prepayment date, the aggregate principal amount of the Notes of such Series to be prepaid on such date, the principal amount of the Notes of such Series held by such holder to be prepaid on that date and that such prepayment is to be made pursuant to paragraph 4B. Notice of prepayment having been given as aforesaid, the principal amount of the Notes specified in such notice, together with interest thereon to the prepayment date and together with the Yield-Maintenance Amount, if any, herein provided, shall become due and payable on such prepayment date. The Company shall, on or before the day on which it gives written notice of any prepayment pursuant to paragraph 4B, give telephonic notice of the principal amount of the Notes to be prepaid and the prepayment date to each Significant Holder which shall have designated a recipient for such notices in the purchaser schedule attached hereto or to the applicable Confirmation of Acceptance or by notice in writing to the Company.

**4D. Application of Prepayments.** In the case of each prepayment of less than the entire unpaid principal amount of all outstanding Notes of any Series pursuant to paragraph 4A(1), 4A(2), 4A(3) or 4B, the amount to be prepaid shall be applied pro rata to all outstanding Notes of such Series (including, in the case of any prepayment pursuant to paragraph 4A(1), 4A(2) or 4A(3), all Notes prepaid or otherwise retired or purchased or otherwise acquired by the Company or any of its Subsidiaries or Affiliates other than by prepayment pursuant to paragraph 4A or 4B) according to the respective unpaid principal amounts thereof.

**4E. Retirement of Notes.** The Company shall not, and shall not permit any of its Subsidiaries or Affiliates to, prepay or otherwise retire in whole or in part prior to their stated final maturity (other than by prepayment pursuant to paragraphs 4A or 4B, or upon acceleration of such final maturity pursuant to paragraph 7A), or purchase or otherwise acquire, directly or indirectly, Notes of any Series held by any holder unless the Company or such Subsidiary or Affiliate shall have offered to prepay or otherwise retire or purchase or otherwise acquire, as the case may be, the same proportion of the aggregate principal amount of Notes of such Series held by each other holder of Notes of such Series at the time outstanding upon the same terms and conditions. Any Notes so prepaid or otherwise retired or purchased or otherwise acquired by the Company or any of its Subsidiaries or Affiliates shall not be deemed to be outstanding for any purpose under this Agreement, except as provided in paragraph 4D.

**5. AFFIRMATIVE COVENANTS.** During the Issuance Period and so long thereafter as any Note is outstanding and unpaid, each of Holdings and the Company covenants as follows:

**5A. Financial Statements.** Holdings and the Company covenant that they will deliver to each holder of the Notes:

(i) as soon as practicable and in any event within the earlier to occur of 60 days after the end of each quarterly period (other than the last quarterly period) in each fiscal year or the date on which another creditor of Holdings or the Company first receives such information, consolidated statements of income and cash flows of Holdings and its Subsidiaries for the period from the beginning of the current fiscal year to the end of such quarterly period, and a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such quarterly period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year, all in reasonable detail and certified by an authorized financial officer of Holdings, subject only to changes resulting from year-end adjustments; provided that such quarterly financial statements may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date on which Holdings posts such documents, or provides a link thereto, on Holdings' website;

(ii) as soon as practicable and in any event within the earlier to occur of 120 days after the end of each fiscal year or the date on which another creditor of Holdings or the Company first receives such information, consolidated statements of income and cash flows of Holdings and its Subsidiaries for such year and a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such year, setting forth in each case in comparative form corresponding figures from the preceding annual audit, all in reasonable detail and reasonably satisfactory in scope to the Required Holder(s) and certified by independent public accountants of recognized standing whose opinion shall be unqualified and otherwise satisfactory in scope and substance to the Required Holder(s), provided that such opinion shall be deemed otherwise satisfactory if prepared and rendered in accordance with GAAP and generally accepted auditing standards; provided that such annual financial statements may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date on which Holdings posts such documents, or provides a link thereto, on Holdings' website;

(iii) promptly upon transmission thereof, copies of all such financial, proxy and information statements, notices and other reports as are sent to Holdings' stockholders and copies of all registration statements (with such exhibits as any holder reasonably requests) and all reports which are filed with the Securities and Exchange Commission (or any governmental body or agency succeeding to the functions of the Securities and Exchange Commission);

(iv) promptly upon receipt thereof, a copy of each other material report submitted to Holdings or any of its Subsidiaries by independent accountants in connection with any material annual, interim or special audit made by them of the books of Holdings or such Subsidiary pursuant to a request by Holdings' Board of Directors;

(v) promptly after the furnishing thereof, copies of any certificate, statement or report furnished to any other holder of the debt securities of Holdings or the Company pursuant to the terms of any indenture, loan, credit or similar agreement or instrument and not otherwise required to be furnished to the holders of the Notes pursuant to any other clause of this paragraph 5; and

(vi) with reasonable promptness, such other financial data (including without limitation the information specified in paragraph 5E(ii)) as any holder of Notes may reasonably request.

Together with each delivery of financial statements required by clauses (i) and (ii) above, Holdings and the Company will deliver to each holder of Notes an Officer's Certificate (a) setting forth computations showing (non)compliance with (I) the covenants in paragraphs 6A(1), 6A(2), 6A(3), 6A(4), 6A(5), 6B(2)(iii), 6B(2)(iv), 6B(3)(iv) and 6B(3)(v), (II) in the event the Company elects to have an appraisal performed in accordance with the definition of Appraised Value, as provided in the definition of Total Adjusted Asset Value, the covenant in paragraph 6A(6), and (III) any Incorporated Term requiring a calculation in order to determine compliance with such term (including with respect to each such covenant described in this clause (a), where applicable, a reconciliation from GAAP, as reflected in the financial statements then being furnished, to the calculation of such financial covenants, after giving effect to any change in accounting for Capitalized Lease Obligations which has occurred after the Initial Closing Day), and (b) stating that to the best of his or her knowledge, after due inquiry, there exists no Default or Event of Default, or if any such Default or Event of Default exists, specifying the nature and period of existence thereof and what action Holdings and the Company propose to take with respect thereto.

Holdings and the Company also covenant that forthwith upon a Responsible Officer obtaining actual knowledge of an Event of Default or Default, they will deliver to each holder of Notes an Officer's Certificate specifying the nature and period of existence thereof and what action Holdings and the Company propose to take with respect thereto.

**5B. Inspection of Property.** Holdings and the Company covenant that they will permit any employees or designated representatives of Prudential, any Prudential Affiliate or any other holder of Notes in an original principal amount in excess of \$5,000,000, at such Person's expense, to visit and inspect any of the properties of Holdings and its Subsidiaries, to examine their books and financial records and to make copies thereof or extracts therefrom and to discuss their affairs, finances and accounts with the Responsible Officers and Holdings' and the Company's independent certified public accountants, all at such times as the Company and such Person reasonably agree and as often as such Person may reasonably request; provided that a Responsible Officer of the Company shall have reasonable prior notice of, and may elect to be present during, discussions with the Company's independent public accountants.

**5C. Covenant to Secure Notes Equally.** Each of Holdings and the Company covenants that, if it or any of its Subsidiaries shall create, assume or otherwise incur any Lien upon any of its property or assets, whether now owned or hereafter acquired, other than Liens permitted by the provisions of paragraph 6B(1) (unless prior written consent to the creation or assumption thereof shall have been obtained pursuant to paragraph 12C), Holdings will make, or will cause its Subsidiaries to make, effective provision whereby the Notes will be secured by such Lien equally and ratably with any and all other Debt thereby secured so long as any such other Debt shall be so secured.

**5D. Information Required by Rule 144A.** Each of Holdings and the Company covenants that it will, upon the request of the holder of any Note, provide such holder, and any qualified institutional buyer designated by such holder, such financial and other information as such holder may reasonably determine to be necessary in order to permit compliance with the information requirements of Rule 144A under the Securities Act in connection with the resale of Notes, except at such times as Holdings or the Company, as applicable, is subject to and in compliance with the reporting requirements of section 13 or 15(d) of the Exchange Act. For the purpose of this paragraph 5D, the term "**qualified institutional buyer**" shall have the meaning specified in Rule 144A under the Securities Act.

**5E. Maintenance of Properties; Insurance.** Each of Holdings and the Company covenants that it and each Subsidiary will (i) maintain or cause to be maintained in good repair, working order and condition all material properties used or useful at that time in its business and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof and (ii) maintain insurance with reputable and financially sound insurers in such amounts and against such liabilities and hazards as is customarily maintained by other companies operating similar businesses.

**5F. Environmental and Safety Laws.** (i) Each of Holdings and the Company covenants that it will deliver promptly to each Significant Holder notice of (a) any material enforcement, cleanup, removal or other material governmental or regulatory action instituted or, to Holdings' or the Company's best knowledge, threatened against Holdings or the Company or any Significant Subsidiary pursuant to any Environmental and Safety Laws, (b) all material Environmental Liabilities and Costs against or in respect of the Property, Holdings, the Company or any Significant Subsidiary and (c) Holdings' or the Company's or any Significant Subsidiary's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that Holdings, the Company or such Significant Subsidiary has reason to believe could cause such Property or any material part thereof to be subject to any material restrictions on its ownership, occupancy, transferability or use under any Environmental and Safety Laws.

(ii) Each of Holdings and the Company covenants that it will, and will cause each of its Significant Subsidiaries to, keep and maintain the Property and conduct its and their operations in compliance with all applicable Environmental and Safety Laws except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5G. Guarantors.** Each of Holdings and the Company covenants that concurrently with any such time as any Person becomes a guarantor or other obligor under any Principal Credit Facility (other than a Principal Credit Facility under which one or more Foreign Subsidiaries are the primary obligors), the Company shall cause such Person to (i) become a party to the Multiparty Guaranty by executing and delivering to the holders of the Notes a Joinder Agreement, and (ii) deliver to the holders of the Notes such organization documents, resolutions and favorable opinions of counsel, all in form, content and scope similar to those delivered on the Initial Closing Day with respect to Holdings or otherwise reasonably satisfactory to the Required Holders.

**5H. Certain Other Provisions.** Each of Holdings and the Company covenants that if at any time a Principal Credit Facility of Holdings, the Company or any of their respective Subsidiaries includes (a) any one or more covenants or events of default that are not provided in this Agreement or (b) any one or more covenants or events of default that are more restrictive than the same or similar covenants or events of default provided in this Agreement, then such additional or more restrictive covenants or events of default (each, an "**Incorporated Term**") will automatically be incorporated into this Agreement (but, for the avoidance of doubt, in the course of the incorporation into this Agreement of any Incorporated Term the scope and meaning of such Incorporated Term will not change) and, once incorporated, may not thereafter be modified except pursuant to the requirements of paragraph 12C, provided that the immediately preceding clauses (a) and (b) shall exclude any covenants or events of default primarily relating to collateral, provided further that: (i) if any Principal Credit Facility is either (x) terminated or (y) reduced to an aggregate principal or commitment amount of less than \$40,000,000, in each case, at a time when no event of default exists and no waiver is in effect under any Incorporated Term of such Principal Credit Facility, then any and all Incorporated Terms previously incorporated by reference from such Principal Credit Facility shall, upon such termination or reduction, as the case may be, automatically no longer be incorporated into this Agreement; (ii) if Prudential and Prudential Affiliates at any time hold less than 50% of the total outstanding principal amount of all Notes, then (I) any and all Incorporated Terms previously incorporated by reference from any Principal Credit Facility other than the Bank Credit Agreement and (II) any and all Incorporated Terms previously incorporated by reference from the Bank Credit Agreement other than financial covenants shall, in the case of each of clause (I) and clause (II), on and after such time, automatically no longer be incorporated into this Agreement; and (iii) if the aggregate principal amount of all Notes held by Prudential and Prudential Affiliates at any time is equal to or less than \$75,000,000 and if such amount then represents 35% or less of the aggregate principal or commitment amount of all unsecured credit facilities of the Company at such time, then any and all

Incorporated Terms previously incorporated by reference from any Principal Credit Facility other than the Bank Credit Agreement shall, on and after such time, automatically no longer be incorporated into this Agreement.

**5I. Appraisal Requirement.** If the Company elects to have an appraisal performed for the purposes of determining the Appraised Value, such appraisal, and the resulting Appraised Value reflected therein, shall be updated no less frequently than every 24 months.

**6. NEGATIVE COVENANTS.** During the Issuance Period and so long thereafter as any Note or amount due hereunder is outstanding and unpaid, each of Holdings and the Company covenants as follows:

**6A. Financial Covenants.** Holdings will not permit:

**6A(1). Minimum Consolidated Shareholders' Equity.** Consolidated Shareholders' Equity at any time to be less than the sum of (a) the amount equal to 70% of Consolidated Shareholders' Equity (based on the consolidated financial statements for the Company as of March 31, 2012, prepared on a pro-forma basis after giving effect to the consummation of the Restructuring and Spin-Off, which amount in no event shall be less than \$612,000,000), plus (b) to the extent positive, 25% of Consolidated Net Income for each fiscal quarter ended after March 31, 2012 (such required minimum consolidated shareholders' equity amount not to be reduced by any consolidated net loss during any such fiscal quarter).

**6A(2). Fixed Charge Coverage Ratio.** The ratio of Adjusted EBITDA to Fixed Charges to be less than 1.50 to 1.00 at the end of any fiscal quarter.

**6A(3). Debt to Total Adjusted Asset Value.** The ratio of the consolidated Debt of Holdings and its Subsidiaries to Total Adjusted Asset Value at any time to exceed 0.50 to 1.00.

**6A(4). Unencumbered Income Producing Assets Value to Unsecured Debt.** The ratio of Unencumbered Income Producing Assets Value to Unsecured Debt at any time to be less than 1.75 to 1.00.

**6A(5). Priority Debt.** The aggregate principal amount of Priority Debt at any time to exceed 20% of the Total Adjusted Asset Value at such time.

**6A(6). Minimum Unencumbered Fixed Charge Coverage Ratio.** In the event the Company elects to have an appraisal performed in accordance with the definition of Appraised Value, as provided in the definition of Total Adjusted Asset Value, Holdings and its Subsidiaries shall maintain, at the end of each fiscal quarter to occur after the fiscal quarter in which an Appraised Value from such appraisal was used, a minimum Unencumbered Fixed Charge Coverage Ratio of at least 1.50 to 1.00.

For purpose of each of paragraph 6A(3) and paragraph 6A(5), at Holdings' option, (a) nonrecourse debt of Holdings or its Subsidiaries with respect to Development Real Properties owned by Holdings or such Subsidiary may be excluded from the calculation of Debt (solely for purpose of paragraph 6A(3)) and Priority Debt (solely for purpose of paragraph 6A(5)) and (b) in each case the Applicable Value (as defined below) of the associated Development Real Properties of Holdings or such Subsidiary shall be excluded from the calculation of Total Adjusted Asset Value; provided that: (i) if the amount of such excluded nonrecourse debt exceeds 70% of the book value of the associated Development Real Properties, then Holdings may not elect to exclude the amount of such nonrecourse debt from the calculation of Debt and Priority Debt unless the amount of such excluded nonrecourse debt is equal to or less than 70% of the Appraised Value of the associated Development Real Properties (the book value of the associated Development Real Properties (if the amount of such excluded nonrecourse debt is equal to or less than 70% of the book value of the associated Development Real Properties) or the Appraised Value of the associated Development Real Properties (if the amount of such excluded nonrecourse debt exceeds 70% of the book value of the associated Development Real Properties but is equal to or less than 70% of the Appraised Value of the associated Development Real Properties), as applicable, being referred to as the "**Applicable Value**"); (ii) the aggregate amount of nonrecourse debt excluded shall not at any time exceed 15% of the consolidated total assets of Holdings and its Subsidiaries (less cash, cash equivalents, marketable securities, goodwill, non-controlling interest and pension assets) in accordance with GAAP for the most recent fiscal quarter with respect to which financial statements are required to be delivered pursuant to paragraph 5A(i) or (ii); and (iii) the exclusion of the Applicable Value of the associated Development Real Properties from Total Adjusted Asset Value referred to in clause (b) of this sentence shall be calculated only after giving effect to the reduction, if any, in Total Adjusted Asset Value required by the proviso in clause (c) of the definition of "Total Adjusted Asset Value." For purposes of this paragraph, "nonrecourse debt" shall include fully recourse mortgage and similar financings obtained by a Subsidiary of the Company if the mortgaged real property constitutes substantially all of the assets of such Subsidiary.

For purposes of all calculations made under the financial covenants set forth in paragraph 6A for an applicable period, (i) if during such period Holdings, the Company or any other Subsidiary shall have consummated an acquisition of a Significant Subsidiary or a Significant Line of Business, (x) Adjusted EBITDA and EBITDA (as such term is defined in the definitions of "Total Adjusted Asset Value" and "Unencumbered Income Producing Assets Value"), as applicable, for such period shall be calculated after giving pro-forma effect thereto as if such transaction occurred on the first day of such period; provided, that if the aggregate purchase price for any such acquisition is greater than or equal to \$25,000,000, Adjusted EBITDA and EBITDA (as such term is defined in the definitions of "Total Adjusted Asset Value" and "Unencumbered Income Producing Assets Value"), as applicable, shall only be calculated on a pro-forma basis to the extent such pro-forma calculations are based on audited financial statements or other financial statements reasonably satisfactory to the Required Holders and (y) any Debt incurred or assumed by any Credit Party or Subsidiary (including the Person or property acquired) in connection with such transaction and any Debt of the Person or property acquired which is not retired in connection with such transaction (1) shall be deemed to have been incurred as of the last day of the previous period and (2) if such Debt has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this paragraph determined by utilizing the rate which is or would be in effect with respect to such Debt as at the relevant date of determination, (ii) if during such period Holdings, the Company or any other Subsidiary shall have consummated a disposition of all or substantially all of the assets of Holdings, the Company or any other Subsidiary or of a majority of the equity interests of a Subsidiary or of a Significant Line of Business, (x) Adjusted EBITDA and EBITDA (as such term is defined in the definitions of "Total Adjusted Asset Value" and "Unencumbered Income Producing Assets Value"), as applicable, for such period shall be calculated after giving pro-forma effect thereto as if such transaction occurred on the last day of the previous period and (y) any Debt which is retired in connection with such transaction shall be excluded and deemed to have been retired as of the last day of the previous period, and (iii) if the calculation for any period includes a period prior to the consummation of the Reorganization, (x) Adjusted EBITDA and EBITDA (as such term is defined in the definitions of "Total Adjusted Asset Value" and "Unencumbered Income Producing Assets Value"), as applicable, for such period shall be calculated after giving pro-forma effect thereto as if the Reorganization occurred on the first day of such period and (y) any Debt which is retired in connection with the Reorganization shall be excluded and deemed to have been retired as of the last day of the previous period, so long as, in each case for clauses (i), (ii) and (iii) above, such pro-forma calculations are acceptable to the Required Holders.

**6B. Lien and Other Restrictions.** Neither Holdings nor the Company will, or will permit its Subsidiaries to:

**6B(1). Liens.** Create, assume or suffer to exist at any time any Lien on or with respect to any of its property or assets, whether now owned or hereafter acquired (whether or not provision is made for the equal and ratable securing of the Notes in accordance with the provisions of paragraph 5C hereof), except:

(i) Liens for taxes not yet delinquent or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP;

(ii) Liens (other than Liens pursuant to ERISA) incidental to the conduct of its business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of its property or assets, taken as a whole, or materially impair the use thereof in the operation of its business;

(iii) Liens securing Debt between Subsidiaries or owing to the Company by a Subsidiary;

(iv) Liens (other than as specified in clauses (i) - (iii) above) of the Company and Subsidiaries in existence on the Initial Closing Day as set forth in Schedule 6B(1);

(v) subject to compliance with paragraph 6A(5), Liens securing Debt other than as set forth in the foregoing clauses (i) - (iv), provided that: (a) there shall not exist any Lien of any kind on the shares of the Voting Stock of any Subsidiary unless Holdings and Subsidiaries continue to own shares of Voting Stock of such Subsidiary which are not subject to any Lien and which represent a majority of the Voting Stock of such Subsidiary; and (b) neither Holdings nor the Company shall secure or permit to be secured any Principal Credit Facility unless the Notes and this Agreement are simultaneously secured pursuant to terms and provisions, including an intercreditor agreement, reasonably satisfactory to the Required Holders; provided, however, that (1) if such Principal Credit Facility is either (x) terminated, or (y) reduced to an aggregate principal or commitment amount of less than \$40,000,000, in each case, at a time when no Event of Default exists and no waiver is in effect under this Agreement, then the Notes and this Agreement shall no longer be secured by the collateral securing such Principal Credit Facility and the Purchasers agree to take any and all actions reasonably requested by the Company (at the Company's sole expense) in order to release the security interest, and (2) if any Liens on assets securing such Principal Credit Facility are released at a time when no Event of Default exists and no waiver is in effect under this Agreement, then such assets shall no longer secure the Notes and this Agreement and the Purchasers agree to take any and all action reasonably requested by the Company (at the Company's sole expense) in order to release such Liens. Notwithstanding anything to the contrary herein, for purposes of clause (b) of the first proviso of this paragraph 6B(1)(v), clause (b) of the definition of Principal Credit Facility shall exclude all mortgage financings not in excess of the amount permitted to be outstanding pursuant to paragraph 6A(5);

(vi) materialmen's, mechanic's, carrier's, repairmen's, warehousemen's and judgment Liens (but, in the case of judgment Liens, only to the extent not constituting an Event of Default under paragraph 7A(xiii)), Liens arising by operation of law and other similar Liens;

(vii) utility easements, building restrictions and such other encumbrances or charges against real property as are of a nature generally existing with respect to properties of a similar character and which do not in any material way affect the marketability of the same or interfere with the use thereof in the business of Holdings or the Subsidiaries;

(viii) Liens (other than any Lien imposed by ERISA) arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation,

(ix) deposits to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(x) subject to compliance with paragraph 6A(5), Liens arising in connection with any capital lease transactions; provided that no such Lien shall extend to or cover any assets other than the assets subject to the applicable capital lease transaction; and

(xi) Liens securing commercial letters of credit (other than any such letters of credit issued pursuant to the Bank Credit Agreement); provided that no such Lien shall extend to or cover any assets of Holdings or any of its Subsidiaries other than the inventory (and bills of lading and other documents related thereto) being financed by any such commercial letters of credit.

**6B(2). Loans and Advances.** Make or permit to remain outstanding at any time any loan or advance to any Person, except that (a) Holdings may make loans or advances to the Company and (b) the Company and its Subsidiaries may:

(i) subject to paragraph 6A(5), make or permit to remain outstanding loans and advances to the Company and Subsidiaries;

(ii) make or permit to remain outstanding travel and other like advances and customary employee benefits in reasonable amounts to employees in the ordinary course of business;

(iii) make or permit to remain outstanding purchase money loans to Third Parties to whom it sells real property in the ordinary course of its Property Development Activities and its Property Management Business, provided that the aggregate amount of all such purchase money loans may not exceed at any one time an amount equal to 15% of the Consolidated Total Assets of Holdings at the end of the fiscal quarter most recently ended as of any date of determination (or 15% of the Consolidated Total Assets of the Company, if such fiscal quarter is the fiscal quarter ended March 31, 2012);

(iv) make or permit to remain outstanding other Third Party loans and advances on standard arm's-length terms, all such loans and advances not to exceed an aggregate of \$50,000,000 at any time outstanding; and

(v) make advances of payroll payments to employees in the ordinary course of business.

**6B(3). Merger and Sale of Assets.** Merge with or into or consolidate with any other Person or sell, lease, transfer or otherwise dispose of its assets, except that:

(i) any Subsidiary may merge with the Company, so long as the Company is the surviving Person;

(ii) any Subsidiary may merge with another Subsidiary, or sell, lease, transfer or otherwise dispose of its assets to another Subsidiary or to the Company;

(iii) the Company or any Subsidiary may sell, exchange, lease, transfer or otherwise dispose of assets (other than Undeveloped Land) in the ordinary course of business;

(iv) the Company or any Subsidiary may sell, lease, transfer or otherwise dispose of assets (other than Undeveloped Land) to Third Parties so long as (A) the fair market value thereof on the date sold, leased, transferred or otherwise disposed of, together with the fair market value of all other assets sold, leased, transferred or otherwise disposed of to Third Parties pursuant to this clause (iv) within the prior 12 months, does not represent more than 20% of the Consolidated Total Assets of Holdings at the end of the fiscal quarter most recently ended as of any date of determination (or 20% of the Consolidated Total Assets of the Company, if such fiscal quarter is the fiscal quarter ended March 31, 2012) and (B) such assets, together with all other assets sold or otherwise disposed of to Third Parties pursuant to this clause (iv) since the beginning of the most recently ended fiscal year, did not contribute more than 10% of Adjusted EBITDA determined as of the most recent fiscal quarter with respect to which financial statements are required to be delivered pursuant to paragraph 5A(i) or (ii); provided that, notwithstanding the applicable limitations appearing in clauses (A) and (B), above, sales or dispositions in excess thereof in a twelve month period may be made for cash if the proceeds of each such excess sale or disposition (net of taxes thereon) are fully utilized in the acquisition of Permitted Assets and/or applied to the repayment of Permitted Debt, in each case within 365 days from the date of such sale or disposition;

(v) the Company or any of its Subsidiaries may (A) engage in Code §1031 like-kind exchanges with respect to Undeveloped Land, and (B) sell, lease, transfer or otherwise dispose of Undeveloped Land to (1) the Company or any of its Subsidiaries, (2) a Person which is not (and after giving effect thereto will not be) a Subsidiary, solely in exchange for an equity interest in such Person (unless at the time thereof the intention was that such Person would sell such land in its undeveloped state or that any proceeds would be received on or with respect to such equity interest prior to the time such land is developed for commercial or residential purposes), or (3) Third Parties; provided that if in any twelve month period the aggregate fair market value of Undeveloped Land which is sold, leased, transferred or otherwise disposed of pursuant to this clause (3), is greater than \$100,000,000, then, within 365 days from the date of each sale, lease, transfer or other disposition which resulted in the \$100,000,000 threshold being exceeded, an amount equal to such excess, net of taxes thereon, shall be fully utilized in the acquisition of Permitted Assets and/or applied to the repayment of Permitted Debt; and

(vi) the Company may merge or consolidate with another corporation or other Person if (A) the Company will be the continuing or surviving entity and (B) no Default or Event of Default would exist immediately after giving effect to such merger or consolidation.

**6B(4). Transactions with Holders of Partnership or Other Equity Interests.** Directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise deal with, in the ordinary course of business or otherwise (i) any Affiliate (other than in the capacity of an employee, director or officer), or (ii) any Person owning, beneficially or of record, directly or indirectly, 5% or more of the outstanding voting stock of Holdings or the Company or any executive officer (as such term is defined under the Exchange Act) of Holdings or the Company (other than in such Person's capacity as an employee); provided, however, that such acts and transactions may be performed or engaged in if (a) they are entered into upon terms no less favorable to Holdings, the Company or such other Subsidiary than if no such relationship described in clauses (i) or (ii) above existed and such acts or transactions are otherwise permitted by this Agreement, (b) they are acts and transactions in which the only consideration given by Holdings or any of its Subsidiaries is the issuance by Holdings of its capital stock, (c) they are between Holdings and/or any of its wholly-owned Subsidiaries, (d) they are otherwise permitted under paragraph 6C hereof or (e) they constitute all or a part of the Reorganization.

**6C. Restricted Payments.** Holdings covenants that it will not declare or pay any dividend or other distribution on any class of its capital stock or other equity interests, redeem or repurchase any such interests or make any other distribution on account of any such interests (all of the foregoing being "Restricted Payments") except that Holdings may make a Restricted Payment in any amount so long as (i) no Default or Event of Default shall then exist or would exist after giving effect to any such Restricted Payment and (ii) any such Restricted Payment will not violate any applicable law or regulation.

**6D. Terrorism Sanctions Regulations.** Each of Holdings and the Company covenants that it will not and will not permit any Affiliated Entity to (i) become an OFAC Listed Person or (ii) have any investments in, or engage in any dealings or transactions with, any Blocked Person.

## 7. EVENTS OF DEFAULT.

**7A. Acceleration.** If any of the following events shall occur and be continuing for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or otherwise):

(i) the Company defaults in the payment of (a) any principal of, or Yield-Maintenance Amount on, any Note, or (b) any interest on or any other amount payable hereunder or under any other Transaction Document for more than five days after the same shall become due, either by the terms thereof or otherwise as herein provided; or

(ii) Holdings, the Company or any other Subsidiary defaults in any payment of principal of, or premium or interest on, any obligation for money borrowed (or of any obligation under a conditional sale or other title retention agreement or of any obligation issued or assumed as full or partial payment for property whether or not secured by a purchase money mortgage or of any obligation under notes payable or drafts accepted representing extensions of credit) other than the Notes beyond any period of grace provided with respect thereto, or Holdings, the Company or any other Subsidiary fails to perform or observe any other agreement, term or condition contained in any agreement (or any other event thereunder or under any such agreement occurs and is continuing) and the effect of such payment default or other failure or event is to cause or to permit the holder or holders of such obligation to cause, such obligation to become due (or to become subject to required repurchase by Holdings, the Company or any other Subsidiary) prior to any stated maturity; provided that the aggregate amount of all obligations as to which such a payment



default shall occur or such a failure or other event causing or permitting acceleration (or required repurchase by Holdings, the Company or any other Subsidiary) shall occur exceeds \$15,000,000; or

(iii) any representation or warranty made by any Credit Party herein or in any other Transaction Document by such Credit Party or any of its officers in any writing furnished in connection with or pursuant to this Agreement or any other Transaction Document shall be false or misleading in any material respect on the date as of which made; or

(iv) Holdings or the Company fails to perform or observe any Incorporated Term (if such term has no grace period associated therewith) or fails to perform any agreement contained in paragraphs 5A(i), 5A(ii), 5C, 5G, 5H or 6 hereof; or

(v) any Credit Party fails to perform or observe any Incorporated Term which has a grace period associated therewith and such failure shall not be remedied within the applicable grace period, or fails to perform or observe any agreement, term or condition contained herein (other than those set forth in paragraphs 5A(i), 5A(ii), 5C, 5G, 5H or 6 hereof) or in any other Transaction Document and such failure shall not be remedied within 30 days after any Responsible Officer obtains actual knowledge thereof; or

(vi) Holdings, the Company or any Significant Subsidiary makes an assignment for the benefit of creditors or is generally not paying its debts as such debts become due; or

(vii) any decree or order for relief in respect of Holdings, the Company or any Significant Subsidiary is entered under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution, liquidation or similar law, whether now or hereafter in effect (herein called the “**Bankruptcy Law**”), of any jurisdiction; or

(viii) Holdings, the Company or any Significant Subsidiary petitions or applies to any tribunal for, or consents to, the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official of Holdings, the Company or any such Significant Subsidiary, or of any substantial part of the assets of Holdings, the Company or any such Significant Subsidiary, or commences a voluntary case under the Bankruptcy Law of the United States or any proceedings (other than proceedings for the voluntary liquidation and dissolution of a Significant Subsidiary) relating to Holdings, the Company or any Significant Subsidiary under the Bankruptcy Law of any other jurisdiction; or

(ix) any petition or application of the type described in clause (viii) of this paragraph 7A is filed, or any such proceedings are commenced, against Holdings, the Company or any Significant Subsidiary and Holdings, the Company or such Significant Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein, or an order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings, and such order, judgment or decree remains unstayed and in effect for more than 45 days; or

(x) any order, judgment or decree is entered in any proceedings against Holdings, the Company or any Significant Subsidiary decreeing the dissolution of Holdings, the Company or such Significant Subsidiary and such order, judgment or decree remains unstayed and in effect for more than 45 days; or

(xi) any order, judgment or decree is entered in any proceedings against Holdings, the Company or any Significant Subsidiary decreeing a split-up of Holdings, the Company or such Significant Subsidiary which requires the divestiture of (A) assets representing a substantial part, or the stock of, or other ownership interest in, a Significant Subsidiary whose assets represent a substantial part of the Consolidated Total Assets of Holdings or (B) assets or the stock of or other ownership interest in a Significant Subsidiary that has contributed a substantial part of Consolidated Net Income for any of the three fiscal years then most recently ended, and such order, judgment or decree remains unstayed and in effect for more than 45 days; or

(xii) (a) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (b) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified Holdings, the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (c) the aggregate amount under all Plans of the fair market value of the assets (within the meaning of Section 303 of ERISA) is less than 70% of the “Funding Target” (within the meaning of Section 303 of ERISA), (d) Holdings, the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (e) Holdings, the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (f) Holdings, the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of Holdings, the Company or any Subsidiary thereunder; and any such event or events described in clauses (a) through (f) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect of the type described in clause (a) or (b) of the definition thereof; or

(xiii) any judgment or decree in the amount of \$25,000,000 or more shall be entered against Holdings, the Company or any of the other Subsidiaries that is not paid or fully covered (beyond any applicable deductibles) by insurance and such judgment or decree shall not have been vacated, discharged or stayed or bonded pending appeal within 60 days from the entry thereof; or

(xiv) any Transaction Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all obligations evidenced by the Notes and under the other Transaction Documents, ceases to be in full force and effect; or any Credit Party or any other Person contests in any manner the validity or enforceability of any Transaction Document; or any Credit Party denies that it has any or further liability or obligation under any Transaction Document, or purports to revoke, terminate or rescind any Transaction Document; or

(xv) any Change of Control shall occur;

then (a) if such event is an Event of Default specified in clause (vii), (viii) or (ix) of this paragraph 7A with respect to Holdings or the Company, all of the Notes at the time outstanding shall automatically become immediately due and payable together with interest accrued thereon and the Yield-Maintenance Amount with respect thereto, without presentment, demand, protest or notice of any kind, all of which are hereby waived by the Company, and (b) with

respect to any event constituting an Event of Default, the Required Holder(s) may at its or their option, by notice in writing to the Company, declare all of the Notes to be, and all of the Notes shall thereupon be and become, immediately due and payable together with interest accrued thereon and together with the Yield-Maintenance Amount, if any, with respect to each Note, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Company.

**7B. Rescission of Acceleration.** At any time after all of the Notes shall have been declared immediately due and payable pursuant to paragraph 7A, the Required Holder(s) may, by notice in writing to the Company, rescind and annul such declaration and its consequences if (i) the Company shall have paid all overdue interest on the Notes, the principal of and Yield-Maintenance Amount, if any, payable with respect to any Notes which have become due otherwise than by reason of such declaration, and interest on such overdue interest and overdue principal and Yield-Maintenance Amount at the rate specified in the Notes, (ii) the Company shall not have paid any amounts which have become due solely by reason of such declaration, (iii) all Events of Default and Defaults, other than non-payment of amounts which have become due solely by reason of such declaration, shall have been cured or waived pursuant to paragraph 12C, and (iv) no judgment or decree shall have been entered for the payment of any amounts due pursuant to the Notes or this Agreement (as this Agreement pertains to the Notes). No such rescission or annulment shall extend to or affect any subsequent Event of Default or Default or impair any right arising therefrom.

**7C. Notice of Acceleration or Rescission.** Whenever any Note or Notes shall be declared immediately due and payable pursuant to paragraph 7A or any such declaration shall be rescinded and annulled pursuant to paragraph 7B, the Company shall forthwith give written notice thereof to the holder of each Note at the time outstanding.

**7D. Other Remedies.** If any Event of Default or Default shall occur and be continuing, the holder of any Note may proceed to protect and enforce its rights under this Agreement, such Note and the other Transaction Documents by exercising such remedies as are available to such holder in respect thereof under applicable law, either by suit in equity or by action at law, or both, whether for specific performance of any covenant or other agreement contained in this Agreement or any other Transaction Document or in aid of the exercise of any power granted in this Agreement or any other Transaction Document. No remedy conferred in this Agreement or any other Transaction Document upon the holder of any Note is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy conferred herein or now or hereafter existing at law or in equity or by statute or otherwise.

**8. REPRESENTATIONS, COVENANTS AND WARRANTIES.** Each of Holdings and the Company represents, covenants and warrants as follows, immediately before and immediately after giving effect to the consummation of each of the Reorganization and the Initial Closing, and at each other time the following representations, covenants and warranties are required to be made pursuant to the other provisions of this Agreement:

**8A. Organization.** Each Credit Party and each Significant Subsidiary is duly organized, validly existing and in good standing under the laws of the state of its organization. Each Credit Party and each Significant Subsidiary has the full power and authority to own its properties and to carry on its business as now being conducted, and is duly qualified in every state where the nature of its business requires that it do so, and is in good standing under the laws of every jurisdiction outside the state of its organization in which it owns or leases property or conducts business and in which the failure to so qualify would have a Material Adverse Effect. Each Credit Party and each Significant Subsidiary has complied in all material respects with (or is exempt from the application of) all material federal, state and local laws, regulations and orders that are, or in the absence of any exemption could be, applicable to the operations of its business, including public utility, bank holding company, state agricultural and Environmental and Safety Laws, in each case except to the extent that the failure to so comply could not reasonably be expected to have a Material Adverse Effect. Each Credit Party has full power, authority and right to execute and deliver, and to perform and observe, the provisions of the Transaction Documents to which it is a party and to carry out the transactions contemplated by such Transaction Documents. The execution, delivery and performance of this Agreement and the Notes to be issued hereunder by the Company has been authorized by all necessary corporate, limited liability company and other action, and, when duly executed and delivered, will be the legal, valid and binding obligations of the Company, enforceable against it in accordance with their respective terms. The execution, delivery and performance of this Agreement by each Credit Party (other than the Company) has been authorized by all necessary corporate and other action, and, when duly executed and delivered, will be the legal, valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its terms.

**8B. Financial Statements.** The Company has, and after the Initial Closing Day Holdings and the Company have, furnished each Purchaser of any Notes with the following financial statements, identified by a Responsible Officer of the Company (or Holdings and the Company, as applicable): (i) consolidated balance sheets of the Company and its Subsidiaries (or, for fiscal years ending after the Initial Closing Day, Holdings and its Subsidiaries) as of the last day in each of the two fiscal years of the Company (or Holdings, as applicable) most recently completed prior to the date as of which this representation is made or repeated (other than fiscal years completed within 120 days prior to such date for which audited financial statements have not been released) and consolidated statements of income, shareholders' equity and cash flows of the Company and its Subsidiaries (or Holdings and its Subsidiaries, as applicable) for each such year, certified by Deloitte & Touche (or such other accounting firm of recognized national standing); (ii) consolidated balance sheets of the Company and its Subsidiaries (or, for fiscal quarters ending after the Initial Closing Day, Holdings and its Subsidiaries) as at the end of the quarterly period (if any) most recently completed prior to such date and after the end of such fiscal year (other than quarterly periods completed within 60 days prior to such date for which financial statements have not been released) and the comparable quarterly period in the preceding fiscal year and consolidated statements of income, stockholders' equity and cash flows of the Company and its Subsidiaries (or Holdings and its Subsidiaries, as applicable) for the periods from the beginning of the fiscal years in which such quarterly periods are included to the end of such quarterly periods, in each case prepared by the Company or Holdings, as applicable; and (iii) the pro forma financial statements contained in Holdings' Amendment No. 2 to Form 10 filed on May 21, 2012. Such financial statements (including any related schedules and/or notes) are true and correct in all material respects (subject, as to interim statements, to changes resulting from audits and year-end adjustments), have been prepared in accordance with GAAP consistently followed throughout the periods involved and show all liabilities, direct and contingent, of the Company and its Subsidiaries (or Holdings and its Subsidiaries, as applicable) required to be shown in accordance with such principles. The balance sheets fairly present the condition of the Company and its Subsidiaries (or Holdings and its Subsidiaries, as applicable) as at the dates thereof, and the statements of income, shareholders' equity and cash flows fairly present the results of the operations and cash flows of the Company and its Subsidiaries (or Holdings and its Subsidiaries, as applicable) for the periods indicated. In the case of any Closing Day occurring after the Initial Closing Day, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect since the end of the most recent fiscal year for which such audited financial statements had been furnished at the time of the Acceptance with respect to the Notes to be issued on such Closing Day.

**8C. Actions Pending.** There is no action, suit, investigation or proceeding pending or, to the knowledge of Holdings or the Company, threatened against Holdings, the Company or any other Subsidiary or any properties or rights of Holdings, the Company or any other Subsidiary, by or before any court, arbitrator or administrative or governmental body which could reasonably be expected to result in any Material Adverse Effect.

**8D. Outstanding Debt.** None of Holdings, the Company or any Subsidiary has any Debt outstanding that would cause Holdings or the Company not to be in compliance with paragraphs 6A(3), 6A(4) or 6A(5). There exists no event of default under the provisions of any instrument evidencing any such Debt or of any agreement relating thereto.

**8E. Title to Properties.** Each Credit Party and each Significant Subsidiary has such title to its properties and assets as is appropriate and sufficient for the conduct of the business which such Credit Party or such Significant Subsidiary presently undertakes or contemplates undertaking, except where the lack thereof could not reasonably be expected to result in a Material Adverse Effect. There are no Liens on such properties and assets that (i) materially restrict such Credit Party's or such Significant Subsidiary's intended use and enjoyment thereof in the ordinary course of business or (ii) are not permitted by paragraph 6B(1). There is no default, nor any event that, with notice or lapse of time or both, would constitute such a default under any lease to which any Credit Party or any such Significant Subsidiary is a lessee, lessor, sublessee or sublessor, except to the extent any of the foregoing defaults could not reasonably be expected to result in a Material Adverse Effect.

**8F. Taxes.** Holdings, the Company and each other Significant Subsidiary has filed all material tax and informational returns which are required to be filed by it. Holdings, the Company and each other such Subsidiary has paid all material taxes as shown on its returns and on all assessments received to the extent that such taxes have become due, except such assessments as are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP. Holdings, the Company and the other Subsidiaries do not have any unpaid tax obligations which collectively could reasonably be expected to have a Material Adverse Effect.

**8G. Conflicting Agreements and Other Matters.** None of the execution and delivery of this Agreement, the Notes or any other Transaction Document, the offering, issuance and sale of the Notes, the fulfillment of and compliance with the terms and provisions of this Agreement, the Notes and the other Transaction Documents will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any Lien upon any of the properties or assets of Holdings, the Company or any other Subsidiary pursuant to, their respective articles or incorporation or bylaws (or other comparable governing documents, as applicable), any award of any arbitrator or any agreement, instrument, order, judgment, decree, and, after due investigation and to Holdings' and the Company's best knowledge, any statute, law, rule or regulation to which Holdings, the Company or any other Subsidiary is subject.

**8H. Offering of the Notes.** Neither the Company nor any agent acting on its behalf has, directly or indirectly, offered the Notes or any similar security of the Company for sale to, or solicited any offers to buy the Notes or any similar security of the Company from, or otherwise approached or negotiated with respect thereto with, any Person or Persons other than Prudential and the Purchasers, and neither the Company nor any agent acting on its behalf has taken or will take any action which would subject the issuance or sale of the Notes to the provisions of Section 5 of the Securities Act or to the provisions of any securities or blue sky law of any applicable jurisdiction.

**8I. Regulation U, Etc.** The amount of all securities that Holdings and its Subsidiaries together own that constitute "margin stock" (as defined in Regulation G (12 CFR Part 221) of the Board of Governors of the Federal Reserve System (herein called "margin stock")) does not exceed 25% of Consolidated Total Assets of Holdings. None of the proceeds of the Notes will be used, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying any margin stock or for the purpose of maintaining, reducing or retiring any indebtedness which was originally incurred to purchase or carry any stock that is currently a margin stock or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of such Regulation U. Neither Holdings or the Company nor any agent acting on their behalf has taken or will take any action which might cause this Agreement, the Notes or any other Transaction Document to violate Regulation U, Regulation T or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Exchange Act, in each case as in effect now or as the same may hereafter be in effect.

#### **8J. ERISA.**

(a) Holdings, the Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. None of Holdings, the Company or any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by Holdings, the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of Holdings, the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to section 430 or 436 of the Code or section 4068 of ERISA, other than such liabilities or Liens as would not be individually or in the aggregate material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of Holdings and its Subsidiaries, taken as a whole.

(b) the aggregate amount under all Plans of the fair market value of the assets (within the meaning of Section 303 of ERISA) is not less than 70% of the "Funding Target" (within the meaning of Section 303 of ERISA).

(c) Holdings, the Company and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of Holdings and its Subsidiaries, taken as a whole.

(d) The expected postretirement benefit obligation (determined as of the last day of Holdings' most recently ended fiscal year in accordance with Financial Accounting Standards Board Accounting Standards Codification 715-60, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of Holdings and its Subsidiaries is not material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of Holdings and its Subsidiaries, taken as a whole.

(e) The execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by Holdings and the Company to each Purchaser in the first sentence of this paragraph 8J(e) is made in reliance upon and subject to the accuracy of such Purchaser's representation in paragraph 9B as to the sources of the funds used to pay the purchase price of the Notes to be purchased by such Purchaser.

**8K. Governmental Consent.** None of Holdings, the Company or any other Subsidiary, nor any of their respective businesses or properties, nor any relationship between Holdings, the Company or any other Subsidiary and any other Person, nor any circumstance in connection with the offering, issuance, sale or delivery of the Notes is such as to require any authorization, consent, approval, exemption or other action by, notice to or filing with any court, administrative or governmental body (other than routine filings after the date of closing with the Securities and Exchange Commission and/or state blue

sky authorities) in connection with (i) the execution and delivery of this Agreement and any other Transaction Documents, (ii) the offering, issuance, sale or delivery of the Notes or (iii) fulfillment of or compliance with the terms and provisions of this Agreement, any other Transaction Document and the Notes.

**8L. Utility Company Status.** (i) Neither Holdings or the Company nor any entity which is directly or indirectly owned, held, or controlled to the degree of ten percent or more (with the power to vote) by Holdings or the Company is any of: (a) a “**public utility**,” as that term is defined under the Federal Power Act, as amended, and the regulations thereunder (together, the “**FPA**”); or (b) a “**natural gas company**,” as that term is defined under the Natural Gas Act, as amended, and the regulations thereunder; or (c) subject to regulation either as a “**public utility**,” or as an “**affiliated interest**” with or of a “**public utility**,” under the law of the state of Hawaii.

(ii) The issuance by the Company of the Notes does not violate the FPA or any Hawaii state law or regulation with respect to “**public utilities**.” Neither Holdings nor the Company (taken together with any entity which is directly or indirectly owned, held, or controlled to the degree of ten percent or more (with the power to vote)) is in violation of the FPA or any Hawaii state law or regulation with respect to “**public utilities**,” except any violations which, individually or in aggregate, would not result in a Material Adverse Effect, or would not impair the ability or right of any Credit Party to perform its obligations with respect to the Transaction Documents. Holdings, the Company and the other Subsidiaries are not in receipt of any notice, assertion or claim that any of them (or any other entity referenced in the immediately preceding sentence) is in violation of the FPA or any Hawaii state or regulation with respect to “**public utilities**.”

**8M. Investment Company Status.** Neither Holdings nor the Company is an “**investment company**” or a company “**controlled**” by an “**investment company**” within the meaning of the Investment Company Act of 1940, as amended, or an “**investment adviser**” within the meaning of the Investment Advisers Act of 1940, as amended.

**8N. Real Property Matters.** Except as could not reasonably be expected to have a Material Adverse Effect: (a) each Credit Party and each Significant Subsidiary has, or is in the process of procuring, for the real property which it owns or uses, such authorizations, consents, approvals, licenses and permissions (collectively, “**Consents**”) that such Credit Party or such Significant Subsidiary believes or has been advised by counsel to be now necessary for it to own, hold, develop, use or operate such real property in its current or intended manner, all in material compliance with applicable laws and regulations; and (b) no Credit Party nor any Significant Subsidiary has received any notice that any such Consent is necessary which has not been obtained, or is in the process of being obtained, other than applications for the same that have been or will be timely filed and are being or will be diligently pursued with the appropriate Governmental Authorities and agencies.

**8O. Possession of Franchises, Licenses, Etc.** Except as could not reasonably be expected to have a Material Adverse Effect: (i) Holdings, the Company and the other Subsidiaries possess all franchises, certificates, licenses, development and other permits and other authorizations from governmental political subdivisions or regulatory authorities and all patents, trademarks, service marks, trade names, copyrights, licenses, easements, rights of way and other rights, free from burdensome restriction, that are necessary in the judgment of Holdings and the Company in any respect for the ownership, maintenance and operation of their business, properties and assets; (ii) none of Holdings, the Company nor any of the other Subsidiaries is in violation of any such rights; and (iii) no event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such rights, or which adversely affect the rights of Holdings, the Company or the other Subsidiaries thereunder.

**8P. Environmental and Safety Matters.** Holdings, the Company and the other Subsidiaries and all of their respective properties and facilities have complied at all times and in all respects with all Environmental and Safety Laws except where failure to comply would not result in a Material Adverse Effect.

**8Q. Hostile Tender Offers.** None of the proceeds of the sale of any Notes will be used to finance a Hostile Tender Offer.

**8R. Employee Relations.** None of Holdings, the Company or any other Subsidiary is the subject of (i) any strike, work slowdown or stoppage, union organizing drive or other similar activity or (ii) any action, suit, investigation or other proceeding involving alleged employment discrimination, unfair termination, employee safety or similar matters that in either case could reasonably be expected to have a Material Adverse Effect or, to the best knowledge of Holdings and the Company, is any such event imminent or likely to occur.

**8S. Regulations and Legislation.** To the best knowledge of Holdings and the Company, no law, regulation, interpretation or legislation has been enacted or issued or is likely to be enacted or issued, that would reasonably be expected to have a Material Adverse Effect.

**8T. Foreign Assets Control Regulations, Etc.**

(i) None of Holdings, the Company or any Affiliated Entity is (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control, U.S. Department of Treasury (“**OFAC**”) (an “**OFAC Listed Person**”) or (b) a department, agency or instrumentality of, or is otherwise controlled by or acting on behalf of, directly or indirectly, (x) any OFAC Listed Person or (y) the government of a country subject to comprehensive U.S. economic sanctions administered by OFAC, currently Iran, Sudan, Cuba, Burma, Syria and North Korea (each OFAC Listed Person and each other entity described in clause (b), a “**Blocked Person**”).

(ii) No part of the proceeds from the sale of the Notes hereunder constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used, directly by the Company or indirectly through any Affiliated Entity, in connection with any investment in, or any transactions or dealings with, any Blocked Person.

(iii) To the actual knowledge of the chief executive officer and the Responsible Officers of Holdings and the Company, none of Holdings, the Company or any Affiliated Entity (a) is under investigation by any Governmental Authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes under any applicable law (collectively, “**Anti-Money Laundering Laws**”), (b) has been assessed civil penalties under any Anti-Money Laundering Laws or (c) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws. Each of Holdings and the Company has taken reasonable measures appropriate to the circumstances (in any event as required by applicable law), to ensure that Holdings, the Company and each Affiliated Entity is and will continue to be in compliance with all applicable current and future Anti-Money Laundering Laws.

(iv) No part of the proceeds from the sale of the Notes will be used, directly or indirectly, for any improper payments to any governmental official or employee, political party, official of a political party, candidate for political office, official of any public international

organization or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage. Each of Holdings and the Company has taken reasonable measures appropriate to the circumstances (in any event as required by applicable law), to ensure that Holdings, the Company and each Affiliated Entity is and will continue to be in compliance with all applicable current and future anti-corruption laws and regulations.

**8U. Disclosure.** Neither this Agreement nor any other document, certificate or statement furnished to Prudential or any Purchaser by or on behalf of Holdings or the Company in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading. There is no fact peculiar to Holdings or the Company or any other Subsidiary which materially adversely affects, or in the future may (so far as Holdings or the Company can now foresee) materially adversely affect, the consolidated business, property, assets, prospects or financial condition of Holdings and the Subsidiaries and which has not been set forth in this Agreement or in the other documents, certificates and statements furnished to each Purchaser by or on behalf of Holdings or the Company prior to the date this representation is made or confirmed in connection with the transactions contemplated hereby; provided, that with respect to projections and other pro forma financial information included in such information, Holdings and the Company only represent that such information was based upon good faith estimates and assumptions believed by the preparer thereof to be reasonable at the time made, it being recognized by the Purchasers that such financial information as it relates to future events is not to be viewed as a fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

## 9. REPRESENTATIONS OF THE PURCHASERS.

Each Purchaser of any Series of Notes purchased on or after the date hereof (in the case of paragraph 9A) or after the date hereof (in the case of paragraph 9B) represents as follows:

**9A. Nature of Purchase.** Such Purchaser is acquiring such Notes for the purpose of investment and not with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act, provided that the disposition of such Purchaser's property shall at all times be and remain within its control. Such Purchaser has no present intention of selling, granting a participation in, or otherwise distributing any of such Notes in any transaction which would be in violation of the securities laws of the United States of America or any state or other jurisdiction thereof, without prejudice, however, to such Purchaser's rights at all times to sell or otherwise dispose of all or any part of such securities under a registration under the Securities Act or under an exemption from such registration available under the Securities Act and subject, nevertheless, to the disposition of such Purchaser's property being at all times within its control. Such Purchaser understands that such Notes have not been registered under the Securities Act and may be exchanged, offered, transferred or resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, and that the Company is not required to register the Notes.

**9B. Source of Funds.** At least one of the following statements is an accurate representation as to each source of funds (a "Source") to be used by such Purchaser to pay the purchase price of such Notes:

(i) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption ("PTE") 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the "NAIC Annual Statement")) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or

(ii) the Source is a separate account that is maintained solely in connection with such Purchaser's fixed contractual obligations under which the amount payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(iii) the Source is either (a) an insurance company pooled separate account, within the meaning of PTE 90-1 or (b) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (iii), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(iv) the Source constitutes assets of an "investment fund" (within the meaning of Part VI of PTE 84-14 (the "QPAM Exemption")) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan's assets that are included in such investment fund, when combined with the assets of all other employee benefits plans established or maintained by the same employer or by an affiliate (within the meaning of Section VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of "control" in Section VI(e) of the QPAM Exemption) owns a 5% or more interest in the Company and (a) the identity of such QPAM and (b) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this clause (iv); or

(v) the Source constitutes assets of a "plan(s)" (within the meaning of Section IV or PTE 96-23 (the "INHAM Exemption")) managed by an "in-house asset manager" or "INHAM" (within the meaning of Part IV of the INHAM Exemption), the conditions of Part I(g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of "control" in Section IV(d) of the INHAM Exemption) owns a 10% or more interest in the Company and (a) the identity of such INHAM and (b) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (v); or

(vi) the Source is a governmental plan; or

(vii) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (vii); or

(viii) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this paragraph 9B, the terms “employee benefit plan,” “governmental plan,” and “separate account” shall have the respective meanings assigned to such terms in Section 3 of ERISA.

**10. DEFINITIONS; ACCOUNTING MATTERS.** For the purpose of this Agreement, the terms defined in paragraphs 10A and 10B (or within the text of any other paragraph) shall have the respective meanings specified therein and all accounting matters shall be subject to determination as provided in paragraph 10C.

**10A. Yield-Maintenance Terms.**

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which commercial banks in New York City or Honolulu, Hawaii are required or authorized to be closed.

“**Called Principal**” means, with respect to any Note, the principal of such Note that (i) is to be prepaid pursuant to paragraph 4B or (ii) is declared to be immediately due and payable pursuant to paragraph 7A, as the context requires.

“**Discounted Value**” means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (converted to reflect the periodic basis on which interest on such Note is payable, if payable other than on a semiannual basis) equal to the Reinvestment Yield with respect to such Called Principal.

“**Reinvestment Yield**” means, with respect to the Called Principal of any Note, 0.50% over the yield to maturity implied by (i) the yields reported, as of 10:00 a.m. (New York City local time) on the Business Day next preceding the Settlement Date with respect to such Called Principal, for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date on the display designated “**Page PX1**” on Bloomberg Financial Markets (“**Bloomberg**”) (or, if Bloomberg shall cease to report such yields on Page PX1 or shall cease to be Prudential’s customary source of information for calculating yield-maintenance amounts on privately placed notes, then such source as is then Prudential’s customary source of such information), or if such yields shall not be reported as of such time or the yields reported as of such time shall not be ascertainable, (ii) the Treasury Constant Maturity Series yields reported, for the latest day for which such yields shall have been reported as of the Business Day next preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such implied yield shall be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between yields reported for various maturities. The Reinvestment Yield shall be rounded to that number of decimal places as appears in the coupon for the applicable Note.

“**Remaining Average Life**” means, with respect to the Called Principal of any Note, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) each Remaining Scheduled Payment of such Called Principal (but not of interest thereon) by (b) the number of years (calculated to the nearest one-twelfth year) which will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

“**Remaining Scheduled Payments**” means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due on or after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date.

“**Settlement Date**” means, with respect to the Called Principal of any Note, the date on which such Called Principal (i) is to be prepaid pursuant to paragraph 4B or (ii) is declared to be immediately due and payable pursuant to paragraph 7A, as the context requires.

“**Yield-Maintenance Amount**” means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Called Principal of such Note over the sum of (i) such Called Principal plus (ii) interest accrued thereon as of (including interest due on) the Settlement Date with respect to such Called Principal. The Yield-Maintenance Amount shall in no event be less than zero.

**10B. Other Terms.**

“**2001 Agreement**” is defined in paragraph 1A.

“**2001 Agreement Notes**” is defined in paragraph 1C.

“**2006 Agreement**” is defined in paragraph 1A.

“**A&B Holdings**” is defined in paragraph 1B.

“**A&B Merger Corp.**” is defined in paragraph 1B.

“**Acceptance**” is defined in paragraph 2B(5).

“**Acceptance Day**” is defined in paragraph 2B(5).

“**Acceptance Window**” is defined in paragraph 2B(5).

“**Accepted Note**” is defined in paragraph 2B(5).

“**Accumulated Funding Deficiency**” means a funding deficiency described in section 302 of ERISA and section 412 of the Code.

“**Additional Guarantor**” is defined in paragraph 11N.

“**Adjusted EBITDA**” means Consolidated Net Income Before Taxes for the period of four consecutive fiscal quarters ended on any date of determination plus, to the extent deducted in the calculation thereof, Consolidated Interest Expense, depreciation and amortization, non-cash stock-based compensation expense, non-cash pension, postretirement and nonqualified expenses, and one-time separation expenses incurred in connection with the Reorganization not to exceed \$11,000,000. Adjusted EBITDA shall exclude non-cash gains or losses resulting from the write-up or write-down of assets.

“**Affiliate**” means, without duplication, any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, Holdings. A Person shall be deemed to control another Person if such first Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

“**Affiliated Entity**” means the Subsidiaries of Holdings and any of their or Holdings’ respective Controlled Affiliates.

“**Agreement**” is defined in paragraph 12C.

“**Agricultural Land**” means land owned in fee by Holdings or its Subsidiaries which is located in the State of Hawaii and zoned exclusively for agricultural purposes, but excluding watershed land, conservation land and pastureland.

“**Applicable Cap Rates**” means (i) 7.50% for Investment Properties, (ii) 9.50% for Agricultural Land which is leased to third parties, and (iii) 9.50% for Leased Non-Agricultural Land.

“**Appraised Value**” means, at any time of determination, the value determined by an appraisal, performed by an accredited appraiser no earlier than one year prior to such time, which assumes no greater than a twelve-month marketing time frame.

“**Authorized Officer**” means (i) in the case of the Company, any officer of the Company designated as an “**Authorized Officer**” in the Information Schedule or any officer of the Company designated as an “**Authorized Officer**” for the purpose of this Agreement in a certificate executed by one of the Company’s then existing Authorized Officers and (ii) in the case of Prudential, any officer of Prudential designated as its “**Authorized Officer**” in the Information Schedule or any officer of Prudential designated as its “**Authorized Officer**” for the purpose of this Agreement in a certificate executed by one of its then existing Authorized Officers. Any action taken under this Agreement on behalf of the Company by any individual who on or after the date of this Agreement shall have been an Authorized Officer of the Company and whom Prudential in good faith believes to be an Authorized Officer of the Company at the time of such action shall be binding on the Company even though such individual shall have ceased to be an Authorized Officer of the Company, and any action taken under this Agreement on behalf of Prudential by any individual who on or after the date of this Agreement shall have been an Authorized Officer of Prudential, and whom the Company in good faith believe to be an Authorized Officer of Prudential at the time of such action shall be binding on Prudential even though such individual shall have ceased to be an Authorized Officer of Prudential.

“**Available Facility Amount**” is defined in paragraph 2B(1).

“**Bank Credit Agreement**” means that certain Credit Agreement, dated as of June 4, 2012, by and among the Company, Bank of America, N.A., First Hawaiian Bank and the other lenders and financial institutions party thereto, as the same may be amended, amended and restated, supplemented, refinanced, replaced or otherwise modified from time to time.

“**Bankruptcy Law**” is defined in clause (vii) of paragraph 7A.

“**Beneficiaries**” is defined in paragraph 11.

“**Blocked Person**” is defined in paragraph 8T.

“**Business Day**” is defined in paragraph 10A.

“**Cancellation Date**” is defined in paragraph 2D(iv).

“**Cancellation Fee**” is defined in paragraph 2D(iv).

“**Capitalized Lease Obligations**” means, with respect to any Person, any rental obligation of such Person which, under GAAP in effect as of the Initial Closing Day, is or will be required to be capitalized on the books of such Person, taken at the amount thereof accounted for as indebtedness (net of interest expense) in accordance with such principles; provided, that the adoption or issuance of any accounting standards after the Initial Closing Day will not cause any rental obligation that was not or would not have been a Capitalized Lease Obligation prior to such adoption or issuance to be deemed a Capital Lease Obligation.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et. seq.), as amended, and the regulations promulgated thereunder.

“**Change of Control**” means: (a) the acquisition, after the date hereof, by any “person” or “group” (as such terms are used in Sections 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934) (but excluding any employee benefit plan of such person or persons or their respective subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) of outstanding shares of voting stock of Holdings representing more than 50% of voting control of Holdings; or (b) after the Merger, the failure of Holdings to own 100% of the equity interests of the Company at any time thereafter.

“**Closing Day**” means the Initial Closing Day, and means, with respect to any Accepted Note, the Business Day specified for the closing of the purchase and sale of such Accepted Note in the Confirmation of Acceptance for such Accepted Note, provided that (i) if the Company and the Purchasers

which are obligated to purchase any Accepted Notes agree on an earlier Business Day for such closing, the “**Closing Day**” for such Notes shall be such earlier Business Day, and (ii) if the closing of the purchase and sale of any Accepted Notes is rescheduled pursuant to paragraph 2C, the Closing Day for such Notes, for all purposes of this Agreement except references to “**original Closing Day**” in paragraph 2D(iii), means the Rescheduled Closing Day with respect to such Notes.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Company**” is defined in the introductory paragraph hereto.

“**Confirmation of Acceptance**” is defined in paragraph 2B(5).

“**Consolidated Interest Expense**” means, for any period of determination thereof, the sum of all amounts that would, in accordance with GAAP, be deducted in computing Consolidated Net Income for such period on account of interest, including without limitation, imputed interest in respect of Capitalized Lease Obligations, fees in respect of letters of credit and bankers’ acceptance financing and amortization of debt discount and expense.

“**Consolidated Net Income**” means, for any period of determination thereof, the consolidated net income from continuing operations of Holdings and its Subsidiaries as determined in accordance with GAAP, provided that the proceeds of any sale or condemnation of real estate that is treated as a discontinued operation pursuant to GAAP shall be treated as income from continuing operations to the extent the net proceeds of such sale or condemnation have been reinvested in real estate within twelve months from the date of sale or condemnation.

“**Consolidated Net Income Before Taxes**” means, for any period of determination thereof, Consolidated Net Income for such period plus the sum of all deferred and current federal, state, local and foreign income taxes that are deducted in accordance with GAAP in computing Consolidated Net Income for such period.

“**Consolidated Shareholders’ Equity**” means, at any time of determination thereof for Holdings and its Subsidiaries determined on a consolidated basis in accordance with GAAP, the sum of (i) consolidated shareholders’ equity, and (ii) any consolidated mezzanine equity (or other temporary or non-permanent equity) resulting from the application of the Financial Accounting Standards Board Accounting Standards Codification Topic 718, and related stock-based compensation awards issued to management which are puttable upon a change of control; provided, that any determination of Consolidated Shareholders’ Equity shall exclude all non-cash adjustments to Consolidated Shareholders’ Equity resulting from the application of the Financial Accounting Standards Board Accounting Standards Codification Topic 960.

“**Consolidated Total Assets**” means, at any time of determination thereof and for any Person, the consolidated total assets of such Person and Subsidiaries determined in accordance with GAAP.

“**Contribution**” is defined in paragraph 1B.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Conversion**” is defined in paragraph 1B.

“**Credit Parties**” means the Company and the Guarantors.

“**Debt**” means, as to any Person at the time of determination thereof without duplication, (i) any indebtedness of such Person (A) for borrowed money, including commercial paper and revolving credit lines, (B) evidenced by bonds, debentures or notes or otherwise representing extensions of credit, whether or not representing obligations for borrowed money or (C) for the payment of the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, regardless of when such liability or other obligation is due and payable, (ii) Capitalized Lease Obligations of such Person, (iii) Guarantees, assumptions and endorsements by such Person (other than endorsements of negotiable instruments for collection in the ordinary course of business) of Debt of another Person, and (iv) Debt, whether or not assumed, that is secured by Liens on the property or other assets of such Person. “**Debt**” shall not include a reimbursement obligation incurred in connection with a standby letter of credit issued (i) in support of trade payables or (ii) as condition to receiving (A) a governmental entitlement, (B) a performance bond or (C) a performance guaranty, in each case under the immediately preceding clauses (i) and (ii) to the extent such reimbursement obligation is contingent and to the extent the aggregate amount of such standby letters of credit does not exceed \$10,000,000.

“**Delayed Delivery Fee**” is defined in paragraph 2D(iii).

“**Development Real Properties**” means, at any time of determination, any real property asset under development, construction, renovation or rehabilitation that (i) is then treated as an asset under development under GAAP, (ii) is located in the State of Hawaii, the Territory of Guam or the continental United States, and (iii) has been designated by the Company in a written notice to the holders of Notes as a “Development Real Property.”

“**Distribution**” is defined in paragraph 1B.

“**Environmental and Safety Laws**” means all federal, state and local laws, regulations and ordinances, relating to the discharge, handling, disposition or treatment of Hazardous Materials and other substances or the protection of the environment or of employee health and safety, including, without limitation, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et. seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et. seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et. seq.), the Clean Air Act (42 U.S.C. Section 7401 et. seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et. seq.), the Occupational Safety and Health Act (29 U.S.C. Section 651 et. seq.) and the Emergency Planning and Community Right-To-Know Act (42 U.S.C. Section 11001 et. seq.), each as the same may be amended and supplemented.

“**Environmental Liabilities and Costs**” means, as to any Person, all liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages, treble damages, contribution, cost recovery, costs and expenses (including all fees, disbursements and expenses of counsel, expert and consulting fees, and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand, by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, permit, order or agreement with any federal, state or local Governmental Authority or other Person, arising from environmental, health or safety conditions, or the release or threatened



release of a contaminant, pollutant or Hazardous Material into the environment, resulting from the operations of such Person or its subsidiaries, or breach of any Environmental and Safety Law or for which such Person or its subsidiaries is otherwise liable or responsible.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” means any corporation which is a member of the same controlled group of corporations as the Company within the meaning of section 414(b) of the Code, or any trade or business which is under common control with the Company within the meaning of section 414(c) of the Code.

“**Event of Default**” means any of the events specified in paragraph 7A, provided that there has been satisfied any requirement in connection with such event for the giving of notice, or the lapse of time, or the happening of any further condition, event or act, and “**Default**” means any of such events, whether or not any such requirement has been satisfied.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“**Facility**” is defined in paragraph 2B(1).

“**FASB**” means the Financial Accounting Standards Board of the American Institute of Certified Public Accountants, or any successor body.

“**Fixed Charges**” means Consolidated Interest Expense for the period of four consecutive fiscal quarters ended on any date of determination, plus preferred dividends of Holdings accrued during such period, plus scheduled principal payments (excluding balloon payments and amounts borrowed under the revolving credit agreement that are classified as current liabilities under GAAP provided no Default or Event of Default then exists under this Agreement or the Bank Credit Agreement) of Holdings and its Subsidiaries for the period of four consecutive fiscal quarters next succeeding such date of determination.

“**Foreign Subsidiary**” means any Subsidiary that is incorporated or organized under the laws of a country other than the United States of America or any state thereof or the District of Columbia, provided that any Subsidiary that is not described in the preceding clause, but which owns voting stock in one or more Foreign Subsidiaries but owns no other material assets and does not engage in any trade or business (other than acting as a holding company for such voting stock in Foreign Subsidiaries) shall be deemed to be a Foreign Subsidiary hereunder; provided further that any Subsidiary which is disregarded as separate from its owner for United States federal income tax purposes and which owns voting stock in one or more Foreign Subsidiaries shall be deemed to be a Foreign Subsidiary.

“**GAAP**” has the meaning provided in paragraph 10C.

“**Governmental Authority**” means (a) the government of (i) the United States of America or any state or other political subdivision thereof, or (ii) any other jurisdiction in which Holdings or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of Holdings or any Subsidiary, or (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

“**Guarantee**” means, without duplication, any obligation, contingent or otherwise, of any Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation of any other Person (the primary obligor) in any manner, directly or indirectly, and including any obligation: (a) to make any loan, advance or capital contribution, or for the purchase of any property from, any Person, in each case for the purpose of enabling such Person to maintain working capital, net worth or any other balance sheet condition or to pay debts, dividends or expenses except for advances, deposits and initial payments made in the usual and ordinary course of business for the purchase or acquisition of property or services; (b) to purchase materials, supplies or other property or services if such obligation requires that payment for such materials, supplies or other property or services be made regardless of whether or not delivery of such materials, supplies or other property or services is ever made or tendered; (c) to rent or lease (as lessee) any real or personal property (except for leases in effect on December 31, 2011) if such obligation is absolute and unconditional under conditions not customarily found in commercial leases then in general use; or (d) of any partnership or joint venture in which such Person is a general partner or joint venturer if such obligation is not expressly non-recourse to such Person; but excluding contingent obligations under (i) a completion guaranty issued in connection with a real estate development project to the extent contingent and not constituting a direct or indirect obligation to repay Debt, and (ii) environmental indemnification agreements.

“**Guaranteed Obligations**” is defined in paragraph 11A.

“**Guarantors**” means Holdings and each Person that hereafter becomes a party to the Multiparty Guaranty pursuant to the requirements of paragraphs 3A or 5G.

“**Hazardous Materials**” means (a) any material or substance defined as or included in the definition of “**hazardous substances**,” “**hazardous wastes**,” “**hazardous materials**,” “**toxic substances**” or any other formulations intended to define, list or classify substances by reason of their deleterious properties, (b) any oil, petroleum or petroleum derived substance, (c) any flammable substances or explosives, (d) any radioactive materials, (e) asbestos in any form, (f) electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million, (g) pesticides or (h) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental agency or authority or which may or could pose a hazard to the health and safety of persons in the vicinity thereof.

“**Hedge Treasury Note(s)**” means, with respect to any Accepted Notes, the United States Treasury Note or Notes whose duration (as determined by Prudential) most closely matches the duration of such Accepted Notes.

“**Holdings**” is defined in paragraph 1B.

“**Hostile Tender Offer**” means, with respect to the use of proceeds of any Note, any offer to purchase, or any purchase of, shares of capital stock of any corporation or equity interests in any other entity, or securities convertible into or representing the beneficial ownership of, or rights to acquire, any such shares or equity interests, if such shares, equity interests, securities or rights are of a class which is publicly traded on any securities exchange or in any over-the-counter market, other than purchases for portfolio investment purposes of such shares, equity interests, securities or rights which, together with any shares, equity interests, securities or rights then owned, represent less than 5% of the equity interests or beneficial ownership of such corporation or other entity, and such offer or purchase has not been duly approved by the board of directors of such corporation or the equivalent governing body of such other entity prior to the date on which the Company makes the Request for Purchase of such Note.

“including” means, unless the context clearly requires otherwise, “including without limitation”.

“Initial Closing” means the time, after satisfaction of each of the conditions precedent in paragraph 3A and each of the conditions precedent in paragraph 3B (with respect to the Series AX Notes, the Series BX Notes and the Series CX Notes), when (i) this Agreement has become effective to amend and restate the 2001 Agreement and the 2006 Agreement, and (ii) the Series AX Notes, the Series BX Notes and the Series CX Notes have been purchased and sold as provided in this Agreement.

“Initial Closing Day” means the day on which the Initial Closing occurs.

“Institutional Investor” means an insurance company, bank, pension fund, investment company, “qualified institutional buyer” (as such term is defined under Rule 144A promulgated under the Securities Act, or any successor law, rule or regulation), “accredited investor” (as such term is defined under Regulation D promulgated under the Securities Act, or any successor law, rule or regulation) or other Person with assets in excess of \$50,000,000 that invests in securities for its own account or as a dealer.

“Issuance Period” is defined in paragraph 2B(2).

“Investment Properties” means developed real estate investment properties located in the State of Hawaii or the continental United States and owned in fee by Holdings or its Subsidiaries, but excluding Development Real Properties, Agricultural Land (whether leased to third parties or operated by Holdings or any of its Subsidiaries), Leased Non-Agricultural Land and agriculture-related properties such as hydroelectric facilities and solar equipment.

“Joinder Agreement” means a joinder agreement to the Multiparty Guaranty, substantially in the form of Exhibit D.

“Leased Non-Agricultural Land” means land owned in fee by Holdings or its Subsidiaries, other than Agricultural Land, located in the State of Hawaii or the continental United States and leased to third parties on arms’-length terms, which land has improvements situated thereon in which none of Holdings or its Subsidiaries has an ownership interest.

“Lien” means any mortgage, deed of trust, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any purchase money mortgage, conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of or agreement to give any financing statement (exclusive of filings for precautionary purposes only) under the Uniform Commercial Code of any jurisdiction).

“margin stock” is defined in paragraph 8I.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the business, condition (financial or otherwise) or operations of Holdings and its Subsidiaries taken as a whole (it being understood and agreed that the Reorganization, in and of itself, shall not be deemed to constitute a Material Adverse Effect), (b) a material impairment of the ability of any Credit Party to perform its obligations under any Transaction Document, or (c) a material adverse effect on the material rights and remedies of the Purchasers taken as a whole, which material adverse effect was not caused by any Purchaser.

“Material Rights” is defined in paragraph 8O.

“Matson” means Matson Navigation Company, Inc., a Hawaii corporation.

“Matson Note Agreement” means that certain Second Amended and Restated Note Agreement, dated as of the date hereof, executed by Matson and the Purchasers (as defined therein), as amended, restated, supplemented or otherwise modified from time to time.

“Merger” is defined in paragraph 1B.

“Multiemployer Plan” means any Plan which is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

“Multiparty Guaranty” is defined in paragraph 11.

“New A&B” is defined in paragraph 1B.

“NOI from Investment Properties” means, for any period of determination thereof for Holdings and its Subsidiaries, the consolidated cash revenues attributable to all Investment Properties less operating expenses, real property taxes, taxes on gross revenue, common area maintenance expenses, ground and other rents, other rental expenses, and charges for property management related thereto, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

“NOI from Leased Agricultural Land” means, for any period of determination thereof for Holdings and its Subsidiaries, the consolidated cash revenues attributable to all Agricultural Land which is leased to third parties on arms’-length terms less operating expenses, real property taxes, taxes on gross revenue, and charges for property management related thereto, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

“NOI from Leased Non-Agricultural Land” means, for any period of determination thereof for Holdings and its Subsidiaries, the consolidated cash revenues attributable to all Leased Non-Agricultural Land less operating expenses, real property taxes, taxes on gross revenue, and charges for property management related thereto, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

**“NOI from Unencumbered Investment Properties”** means, for any period of determination thereof for Holdings and its Subsidiaries, the consolidated cash revenues attributable to Unencumbered Investment Properties less operating expenses, real property taxes, taxes on gross revenue, common area maintenance expenses, ground and other rents, other rental expenses, and charges for property management related thereto, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

**“NOI from Unencumbered Leased Agricultural Land”** means, for any period of determination thereof for Holdings and its Subsidiaries, the consolidated cash revenues attributable to Unencumbered Leased Agricultural Land, less operating expenses, real property taxes, taxes on gross revenue, and charges for property management related thereto, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

**“NOI from Unencumbered Leased Non-Agricultural Land”** means, for any period of determination thereof for Holdings and its Subsidiaries, the consolidated cash revenues attributable to all Unencumbered Leased Non-Agricultural Land less operating expenses, real property taxes, taxes on gross revenue, and charges for property management related thereto, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

**“Notes”** is defined in paragraph 1E.

**“OFAC Listed Person”** is defined in paragraph 8T.

**“Officer’s Certificate”** means a certificate signed in the name of Holdings and/or the Company, as applicable, by a Responsible Officer of such Person.

**“PBGC”** means the Pension Benefit Guaranty Corporation, or any successor or replacement entity thereto under ERISA.

**“Permitted Assets”** means (i) where any Property Sub or any assets of a Property Sub or of the Company have been sold or otherwise transferred, assets, including real estate, to be used by the Company or any Property Sub in conducting Property Development Activities, the Property Management Business or the agribusiness and (ii) in all other instances, assets, including real estate, to be used in conducting Property Development Activities, the Property Management Business or the agribusiness business.

**“Permitted Debt”** means (i) any unsecured Debt of the Company or a Subsidiary (exclusive of Debt owed to the Company or a Subsidiary) selected by the Company, so long as the aggregate amount of all proceeds from sales or other dispositions which are made after December 31, 2011 pursuant to the proviso appearing in clauses (iv) or (v) of paragraph 6B(3) and that are applied to the prepayment of such unsecured Debt pursuant to this clause (i) does not exceed \$150,000,000 and (ii) after the \$150,000,000 basket in clause (i) has been fully utilized, all unsecured Debt of the Company and Subsidiaries (exclusive of any Debt owed to the Company or a Subsidiary thereof) on a pro rata basis.

**“Person”** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**“Plan”** means any **“employee pension benefit plan”** (as such term is defined in section 3 of ERISA) which is or has been established or maintained, or to which contributions are or have been made, by Holdings, the Company or any ERISA Affiliate.

**“Principal Credit Facility”** means (a) the Bank Credit Agreement and (b) with regard to Holdings or any Subsidiary, any other credit agreement, loan agreement, note purchase agreement or similar agreement under which credit facilities in the aggregate principal or commitment amount of at least \$40,000,000 are provided for, in each case, as any of the same may be amended, amended and restated, supplemented or otherwise modified from time to time; provided, however, that the immediately preceding clause (b) shall exclude (i) all purchase money debt, (ii) all construction and other project financings, and (iii) all nonrecourse loans and credit facilities, and guaranties in respect thereof. Nonrecourse shall, for purposes of this definition, include (a) limited recourse loans and credit facilities at all times during which the recourse portion of such loans and credit facilities (including commitments in respect thereof) is not in excess of \$40,000,000, and (b) fully recourse mortgage and similar financings obtained by a Subsidiary of the Company if the mortgaged real property constitutes substantially all of the assets of such Subsidiary.

**“Priority Debt”** means, at any time of determination thereof, and without duplication, the Company’s and Holdings’ Debt secured by a Lien, plus all Debt of Holdings’ Subsidiaries (other than the Company), both secured and unsecured.

**“Prohibited Transaction”** means any transaction described in section 406 of ERISA which is not exempt by reason of section 408 of ERISA or the transitional rules set forth in section 414(c) of ERISA and any transaction described in section 4975(c) of the Code which is not exempt by reason of section 4975(c) (2) or section 4975(d) of the Code, or the transitional rules of section 2003(c) of ERISA.

**“Property”** means all real property owned or leased by Holdings, the Company or any of the other Subsidiaries, and all personal property owned or leased by Holdings, the Company or any other Subsidiary.

**“Property Development Activities”** means land acquisition and development activities, the principal objective of which is to acquire and develop real property for sale or other disposition.

**“Property Management Business”** means the managing, leasing, selling and purchasing of real property.

**“Property Subs”** means Subsidiaries that exist on the date hereof or that are subsequently formed or acquired and, in each case, whose principal business activities are to engage in Property Development Activities.

**“Prudential”** means Prudential Investment Management, Inc. and any successor thereto.

**“Prudential Affiliate”** means (i) any corporation or other entity controlling, controlled by, or under common control with, Prudential and (ii) any managed account or investment fund which is managed by Prudential or a Prudential Affiliate described in clause (i) of this definition. For purposes of this definition the terms **“control”**, **“controlling”** and **“controlled”** means the ownership, directly or through subsidiaries, of a majority of a corporation’s or other Person’s Voting Stock or equivalent voting securities or interests.

**“Purchasers”** means (i) each holder of Notes identified on the Purchaser Schedules hereto, and (ii) with respect to any Shelf Notes, Prudential and/or the Prudential Affiliate(s) which are purchasing such Notes.

**“Reorganization”** is defined in paragraph 1B.

**“Request for Purchase”** is defined in paragraph 2B(3).

**“Required Holder(s)”** means the holder or holders of at least a majority of the aggregate principal amount of the Notes or of a Series of Notes, as the context may require, from time to time outstanding and, if no Notes are outstanding, means Prudential.

**“Rescheduled Closing Day”** is defined in paragraph 2C.

**“Responsible Officer”** means any of Holdings’ or the Company’s (as applicable) chief financial officer, principal accounting officer, treasurer, controller or chief legal officer and any other officer of Holdings or the Company with responsibility for the administration of the relevant portion of this Agreement or matters referenced herein. Any document delivered hereunder that is signed by a Responsible Officer of Holdings or the Company shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of Holdings or the Company and such Responsible Officer shall be conclusively presumed to have acted on behalf of Holdings or the Company, as applicable.

**“Restricted Payments”** is defined in paragraph 6C.

**“Securities Act”** means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

**“Separation Agreement”** means the Separation Agreement dated as of on or about June 8, 2012, by and between A&B Holdings, and shall include the schedules and exhibits relating thereto, and all other agreements entered into in connection with the Reorganization.

**“Series”** is defined in paragraph 1E.

**“Series A Notes”** is defined in paragraph 1C.

**“Series AX Notes”** is defined in paragraph 1D.

**“Series AX Purchasers”** means The Prudential Insurance Company of America, Prudential Life Insurance Company, Ltd., Gibraltar Life Insurance Company, Ltd. and Prudential Retirement Insurance and Annuity Company.

**“Series B Notes”** is defined in paragraph 1C.

**“Series BX Notes”** is defined in paragraph 1D.

**“Series BX Purchasers”** means The Prudential Insurance Company of America.

**“Series C Notes”** is defined in paragraph 1C.

**“Series CX Notes”** is defined in paragraph 1D.

**“Series CX Purchasers”** means The Prudential Insurance Company of America.

**“Series D Notes”** is defined in paragraph 1C.

**“Shelf Notes”** is defined in paragraph 1E.

**“Significant Holder”** means (i) Prudential or any Prudential Affiliate, so long as Prudential or any Prudential Affiliate shall hold any Note or the Issuance Period has not terminated or (ii) any other holder of at least 10% of the aggregate principal amount of the Notes of any Series from time to time outstanding.

**“Significant Line of Business”** means a line of business or an operating division, the book value of which is, on the date determination, equal to 5% or more of Consolidated Shareholders’ Equity.

**“Significant Subsidiary”** means any direct or indirect Subsidiary of Holdings, the net worth of which is, on the date of determination, 5% or more of Consolidated Shareholders’ Equity.

**“Spin-Off”** is defined in paragraph 1B.

**“Subsidiary”** means, as to any Person, any other company, whether operating as a corporation, joint venture, partnership, limited liability company or other entity, which is consolidated with such Person in accordance with GAAP. Unless the context otherwise clearly requires, any reference to a

“Subsidiary” is a reference to a Subsidiary of Holdings.

“**Third Party**” means any Person other than Holdings or its Subsidiaries.

“**Total Adjusted Asset Value**” means, at any time of determination thereof, without duplication, (a) the real estate leasing property value (which shall be deemed to be equal to the sum of (i) NOI from Investment Properties for the then or most recently ended fiscal quarter multiplied by four divided by the Applicable Cap Rates, plus (ii) NOI from Leased Agricultural Land for the then or most recently ended fiscal quarter multiplied by four divided by the Applicable Cap Rates, plus (iii) NOI from Leased Non-Agricultural Land for the then or most recently ended fiscal quarter multiplied by four divided by the Applicable Cap Rates), plus (b) the greater of (x) EBITDA (as defined below) generated from the agricultural division of Holdings and its Subsidiaries (excluding, as an abundance of caution, NOI from Leased Agricultural Land) for the period of four consecutive fiscal quarters then or most recently ended divided by 20.0%, and (y) the Appraised Value of Agricultural Land which is not leased to third parties (provided that the determination of whether or not to obtain the appraisal necessary to determine the Appraised Value shall be made at the option of the Company and if the Company does not elect to have an appraisal performed, then clause (x) will be deemed to be greater than clause (y)), plus (c) the book value of Development Real Properties owned by Holdings or any of its Subsidiaries (with such book value, in the case of a less than wholly-owned Subsidiary or any other entity (other than a Subsidiary) in which Holdings or any of its Subsidiaries owns an equity interest (each, a “**Joint Venture Entity**”), to be (i) with respect to a consolidated Joint Venture Entity, equal to the net assets of such Joint Venture Entity less the non-controlling interest in such Joint Venture Entity as reflected on the most recent consolidated balance sheet of Holdings required to be delivered pursuant to paragraph 5A(i) or (ii), or (ii) with respect to an unconsolidated Joint Venture Entity, equal to the book value of Holdings’ direct or indirect investment in such Joint Venture Entity), provided that the aggregate amount under this clause (c) shall not comprise more than 30% of the consolidated total assets of Holdings and its Subsidiaries (less cash, cash equivalents, marketable securities, goodwill, non-controlling interest and pension assets) in accordance with GAAP for the most recent fiscal quarter with respect to which financial statements are required to be delivered pursuant to paragraph 5A(i) or (ii). For purpose of clause (b) of this definition, “**EBITDA**” means the operating profit of the agricultural division of Holdings and its Subsidiaries, but prior to the deduction in the determination thereof of any expenses in respect of depreciation and amortization.

“**Transaction Documents**” means this Agreement (including the Multiparty Guaranty), the Notes and any and all other agreements and instruments from time to time executed and delivered by or on behalf of any Credit Party related thereto.

“**Transferee**” means any Institutional Investor that is the direct or indirect transferee of all or any part of any Note purchased under this Agreement.

“**Undeveloped Land**” means (i) land owned in fee by the Company or any Subsidiary as of December 31, 2011 which at the time of determination has not been developed for commercial or residential purposes, (ii) land acquired by the Company or any Subsidiary subsequent to December 31, 2011 pursuant to a Code section 1031 like-kind exchange (in exchange for land described in clause (i) or (ii) of this definition) which at the time of determination has not been developed for commercial or residential purposes, or (iii) capital stock or other equity interests of a Subsidiary which owns as its principal asset, directly or indirectly, Undeveloped Land described in clause (i) or (ii) of this definition.

“**Unencumbered Agricultural Division Assets**” means assets of the agricultural division of Holdings and its Subsidiaries which: (i) are not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, and (b) Liens incidental to the conduct of the owner of such asset’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable asset, or materially impair the use thereof; (ii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such asset, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or equity interest of Holdings or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such asset, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or equity interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or equity interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such asset owned by a Subsidiary of Holdings shall be deemed to be an Unencumbered Agricultural Division Asset unless (1) both such asset and all equity interests of the Subsidiary which holds legal title to such asset is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in paragraph 7A(vi)-(xi) of this Agreement (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“**Unencumbered Agricultural Land**” means Agricultural Land which: (i) is not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, and (b) Liens incidental to the conduct of the owner of such property’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof; (ii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or equity interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or equity interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or equity interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such land owned by a Subsidiary of Holdings shall be deemed to be Unencumbered Agricultural Land unless (1) both such land and all equity interests of the Subsidiary which holds legal title to such land is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in paragraph 7A(vi)-(xi) of this Agreement (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“**Unencumbered EBITDA**” means, for any period of determination, with respect to Holdings and its Subsidiaries on a consolidated basis, without duplication, (i) Adjusted EBITDA derived from Unencumbered Investment Properties and Unencumbered Leased Agricultural Land, and (ii) Adjusted EBITDA generated from the agricultural division of Holdings and its Subsidiaries but only to the extent the assets in the agricultural division are Unencumbered Agricultural Division Assets.

“**Unencumbered Fixed Charge Coverage Ratio**” means, as of any date of determination, the ratio of (a) Unencumbered EBITDA for the period of four (4) consecutive fiscal quarters ending on such date to (b) Unencumbered Fixed Charges determined as of such date.

“**Unencumbered Fixed Charges**” means, for any date of determination, with respect to Holdings and its Subsidiaries on a consolidated basis, the portion of Consolidated Interest Expense attributable to Unsecured Debt for the period of four (4) consecutive fiscal quarters ending on such date, plus preferred dividends of Holdings accrued during such period, plus scheduled principal payments with respect to Unsecured Debt (excluding balloon payments and amounts outstanding under the Bank Credit Agreement that are classified as current liabilities under GAAP but only to the extent that no Default or Event of Default then exists under this Agreement or the Bank Credit Agreement) of Holdings and its Subsidiaries for the period of twelve months next succeeding such date of determination.

“**Unencumbered Income Producing Assets Value**” means, at any time of determination thereof, without duplication, (i) the NOI from Unencumbered Investment Properties for the then or most recently ended fiscal quarter multiplied by four divided by the Applicable Cap Rates, plus (ii) the NOI from Unencumbered Leased Agricultural Land for the then or most recently ended fiscal quarter multiplied by four divided by the Applicable Cap Rates, plus (iii) the NOI from Unencumbered Leased Non-Agricultural Land for the then or most recently ended fiscal quarter multiplied by four divided by the Applicable Cap Rates, plus (iv) the greater of (x) EBITDA generated from the agricultural division of Holdings and its Subsidiaries but only to the extent the assets in the agricultural division are Unencumbered Agricultural Division Assets (excluding, as an abundance of caution, NOI from Leased Agricultural Land) for the period of four consecutive fiscal quarters then or most recently ended divided by 20.0%, and (y) the Appraised Value of Unencumbered Agricultural Land which is not leased to third parties (provided that the determination of whether or not to obtain the appraisal necessary to determine the Appraised Value shall be made at the option of the Company and if the Company does not elect to have an appraisal performed, then clause (x) will be deemed to be greater than clause (y)). For purpose of clause (iv) of this definition, “**EBITDA**” means the operating profit of the agricultural division of Holdings and its Subsidiaries, but prior to the deduction in the determination thereof of any expenses in respect of depreciation and amortization.

“**Unencumbered Investment Properties**” means Investment Properties which (i) are not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, and (b) Liens incidental to the conduct of the owner of such property’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof; (ii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such project, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or equity interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such project, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or equity interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or equity interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such Investment Property owned by a Subsidiary of Holdings shall be deemed to be an Unencumbered Investment Property unless (1) both such project and all equity interests of the Subsidiary which holds legal title to such project is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in paragraph 7A(vi)-(xi) of this Agreement (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary

“**Unencumbered Leased Agricultural Land**” means Agricultural Land which is leased to third parties on arms’-length terms and which: (i) is not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (b) Liens incidental to the conduct of the owner of such property’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof, and (c) arms’-length operating leases with third-party lessees; (ii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or equity interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or equity interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or equity interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such land owned by a Subsidiary of Holdings shall be deemed to be Unencumbered Leased Agricultural Land unless (1) both such land and all equity interests of the Subsidiary which holds legal title to such land is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in paragraph 7A(vi)-(xi) of this Agreement (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“**Unencumbered Leased Non-Agricultural Land**” means Leased Non-Agricultural Land which: (i) is not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (b) Liens incidental to the conduct of the owner of such property’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof, and (c) arms’-length operating leases with third-party lessees; (ii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or equity interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or equity interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or equity interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such land owned by a Subsidiary of Holdings shall be deemed to be Unencumbered Leased Non-Agricultural Land unless (1) both such land and all equity interests of the Subsidiary which holds legal title to such land is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in paragraph 7A(vi)-(xi) of this Agreement (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“**Unsecured Debt**” means, at any time of determination thereof, the consolidated Debt of Holdings or its Subsidiaries not secured by any Lien.

“**Voting Stock**” means any shares of stock (or comparable equity securities) whose holders are entitled under ordinary circumstances to vote for the election of directors (or comparable persons), irrespective of whether at the time stock (or comparable equity securities) of any other class or classes has or might have voting power by reason of the happening of any contingency.

**10C. Accounting Principles, Terms and Determinations.** All references in this Agreement to “**generally accepted accounting principles**” and “**GAAP**” shall be deemed to refer to generally accepted accounting principles in effect in the United States at the time of application thereof, but excluding in each case the effects of Accounting Standards Codification 825-10-25 (previously referred to as SFAS 159) or any successor or similar provision to the extent it relates to “**fair value**” accounting for assets and liabilities. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all unaudited financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared, in accordance with generally accepted accounting principles, applied on a basis consistent with the most recent audited consolidated financial statements of Holdings and its Subsidiaries delivered pursuant to clause (ii) of paragraph 5A or, if no such statements have been so delivered, the most recent audited financial statements referred to in clause (i) of paragraph 8B.

**11. MULTIPARTY GUARANTY.** The multiparty guaranty under this paragraph 11 (as amended or otherwise modified from time to time, the “**Multiparty Guaranty**”) is made jointly and severally by each of the Guarantors in favor of the Purchasers and their respective successors, assigns and transferees (each of such Persons being referred to herein as a “**Beneficiary**” and collectively, as the “**Beneficiaries**”).

**11A. Unconditional Guaranty.** Each Guarantor hereby unconditionally, absolutely and irrevocably guarantees to each of the Beneficiaries the prompt and complete payment when due (whether at stated maturity, by acceleration or otherwise) and performance of all Guaranteed Obligations. The term “**Guaranteed Obligations**” shall mean all loans, advances, debts, liabilities and obligations for monetary amounts and otherwise from time to time owing by the Company, in the Company’s capacity as the issuer of Notes, to the Purchasers in connection with this Agreement, the Notes and the other Transaction Documents, whether due or to become due, matured or unmatured, liquidated or unliquidated, contingent or non-contingent, and all covenants and duties regarding such amounts, of any kind or nature, present or future, arising under or in respect of this Agreement, the Notes or the other Transaction Documents (it being understood that this term includes all principal, interest (including interest that accrues after the commencement by or against the Company of any action under applicable bankruptcy or insolvency law under any applicable jurisdiction, whether or not a claim for post-petition interest is allowed as a claim in such bankruptcy or insolvency proceeding), the Yield-Maintenance Amount, if any, premium or other prepayment consideration, fees, expenses, costs or other sums (including, without limitation, all fees and disbursements of any law firm or other external counsel) chargeable to the Company, in the Company’s capacity as the issuer of Notes, under this Agreement, the Notes or the other Transaction Documents).

**11B. Reimbursement of Expenses.** Each Guarantor also agrees to pay upon demand all costs and expenses (including, without limitation, all fees and disbursements of any law firm or other external counsel) incurred by any Beneficiary in enforcing any rights under this Multiparty Guaranty.

**11C. Guaranteed Obligations Unaffected.** No payment or payments made by any other Guarantor or other Credit Party, or by any other guarantor or other Person, or received or collected by any of the Beneficiaries from any other Guarantor or other Credit Party or from any other guarantor or other Person by virtue of any action or proceeding or any setoff or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, release or otherwise affect the liability of each of the Guarantors hereunder which shall, notwithstanding any such payments, remain liable for the Guaranteed Obligations, subject to paragraph 11K below, until the Guaranteed Obligations are paid in full in cash.

**11D. Joint and Several Liability.** All Guarantors and their respective successors and assigns shall be jointly and severally liable for the payment of the Guaranteed Obligations and the expenses required to be reimbursed to the holders of the Notes pursuant to paragraph 11B, above, notwithstanding any relationship or contract of co-obligation by or among the Guarantors or their successors and assigns.

**11E. Enforcement of Guaranteed Obligations.** Each Guarantor hereby jointly and severally agrees, in furtherance of the foregoing and not in limitation of any other right that any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of the Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, 11 U.S.C. § 362(a)), each Guarantor will upon demand pay, or cause to be paid, in cash, the unpaid amount of all Guaranteed Obligations owing to the Beneficiary or Beneficiaries making such demand an amount equal to all of the Guaranteed Obligations then due to such Beneficiary or Beneficiaries.

**11F. Tolling of Statute of Limitations.** Each Guarantor agrees that any payment, performance or other act that tolls any statute of limitations applicable to the obligations, liabilities and indebtedness of the Company owing to the Beneficiaries under this Agreement, the Notes or any of the other Transaction Documents shall also toll the statute of limitations applicable to such Guarantor’s liability under this Multiparty Guaranty to the extent permitted by law.

**11G. Rights of Contribution.** The Company and each Guarantor hereby agree that, to the extent that a Guarantor shall have paid an amount hereunder to any Beneficiary that is greater than the net value of the benefits received, directly or indirectly, by such paying Guarantor as a result of the issuance and sale of the Notes, such paying Guarantor shall be entitled to contribution from the Company or any Guarantor that has not paid its proportionate share, based on benefits received as a result of the issuance and sale of the Notes, of the Guaranteed Obligations. Any amount payable as a contribution under this paragraph 11G shall be determined as of the date on which the related payment or distribution is made by the Guarantor seeking contribution, and each of the Company and the Guarantors acknowledges that the right to contribution hereunder shall constitute an asset of such Guarantor to which such contribution is owed. Notwithstanding the foregoing, the provisions of this paragraph 11G shall in no respect limit the obligations and liabilities of any Guarantor to the Beneficiaries hereunder or under any other Transaction Document, and each Guarantor shall remain liable for the full payment and performance guaranteed hereunder. Any indebtedness or other obligations of the Company or a Guarantor now or hereafter held by or owing to any Guarantor is hereby subordinated in time and right of payment to all indebtedness or other obligations of the Company and the Guarantors to any or all of the Beneficiaries under the Notes, this Agreement or any other Transaction Document.

**11H. Subrogation.** Notwithstanding any payment or payments made by any Guarantor hereunder, each Guarantor hereby irrevocably waives, solely with respect to such payment or payments, any and all rights of subrogation to the rights of the Beneficiaries against the Company and, except to the

extent otherwise provided in paragraph 11G, any and all rights of contribution, reimbursement, assignment, indemnification or implied contract or any similar rights against the Company, any endorser or other guarantor of all or any part of the Guaranteed Obligations, in each case until such time (subject to paragraph 11K below) as the Guaranteed Obligations have been paid in full in cash. In furtherance of the foregoing, for so long as any Guaranteed Obligations shall remain outstanding, no Guarantor shall take any action or commence any proceeding against the Company or any other guarantor of the Guaranteed Obligations (or any of their respective successor, transferees or assigns, whether in connection with a bankruptcy or insolvency proceeding or otherwise), to recover any amounts in respect of payments made under this Multiparty Guaranty to the Beneficiaries. If, notwithstanding the foregoing, any amount shall be paid to any Guarantor on account of such subrogation or other rights at any time when all of the Guaranteed Obligations shall not (subject to paragraph 11K below) have been paid in full in cash, such amount shall be held by such Guarantor in trust for the Beneficiaries entitled thereto, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to such Beneficiaries (to be shared ratably based on the respective principal amounts outstanding of Notes held by such Beneficiaries) in the exact form received by such Guarantor (duly endorsed by such Guarantor to such Beneficiary if required), to be applied against the Guaranteed Obligations of each of such Beneficiaries, whether matured or unmatured, in such order as such Beneficiary may determine.

**11I. Amendments, Etc., With Respect to Guaranteed Obligations.** Each Guarantor shall remain obligated under this Multiparty Guaranty notwithstanding: (a) that any demand for payment of any of the Guaranteed Obligations made by any Beneficiary may be rescinded by such Beneficiary, and any of the Guaranteed Obligations continued; (b) that any of the Agreement (including this Multiparty Guaranty), the Notes or any other Transaction Document may be renewed, extended, amended, modified, supplemented or terminated, in whole or in part (and each Guarantor expressly waives any and all of its rights to consent to any of the foregoing actions described in this clause (b) and agrees that no such action, absent such Guarantor's consent, will result in the exoneration of such Guarantor under applicable law); (c) that any guaranty, collateral or right of setoff at any time held by any Person for the payment of the Guaranteed Obligations may be obtained, sold, exchanged, waived, surrendered or released; (d) any loss or impairment of any rights of subrogation, reimbursement, repayment, contribution, indemnification or other similar rights of any Guarantor against the Company, any other Guarantor or any other Person with respect to all or any part of the Guaranteed Obligations; (e) any assignment or other transfer by any holder of the Notes of any part of the Guaranteed Obligations or the Notes; (f) any impossibility of performance, impracticability, frustration of purpose or illegality under the Agreement (including this Multiparty Guaranty), the Notes or any other Transaction Document or any *force majeure* or act of any Governmental Authority; or (g) any reorganization, merger, amalgamation or consolidation of the Company or any Guarantor with or into any other Person. Each Guarantor hereby waives any and all defenses, counterclaims or offsets which such Guarantor might or could have by reason of any of the foregoing and any other defense or objection which such Guarantor might or could have to the absolute, primary and continuing nature, or the validity, enforceability or amount of this Multiparty Guaranty (other than any defense based upon the final payment in full in cash and performance in full of the Guaranteed Obligations).

**11J. Guaranty Absolute and Unconditional; Termination.** Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Beneficiary upon this Multiparty Guaranty or acceptance of this Multiparty Guaranty. This Agreement, the Notes, the other Transaction Documents and the Guaranteed Obligations in respect of any of them, shall conclusively be deemed to have been created, contracted for or incurred in reliance upon this Multiparty Guaranty; and all dealings between any of the Company or the Guarantors, on the one hand, and any of the Beneficiaries, on the other, shall likewise conclusively be presumed to have been had or consummated in reliance upon this Multiparty Guaranty. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon any Credit Party or any other guarantor with respect to the Guaranteed Obligations. This Multiparty Guaranty shall be construed as a continuing, irrevocable, absolute and unconditional guaranty of payment, performance and compliance when due (and not of collection) and is a primary obligation of each Guarantor without regard to (a) the validity or enforceability of the provisions of this Agreement (other than the Multiparty Guaranty), the Notes, the other Transaction Documents, any of the Guaranteed Obligations or any other guaranty or right of setoff with respect thereto at any time or from time to time held by any Beneficiary, (b) any defense, setoff or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by any of the Credit Parties against any Beneficiary, or (c) any other circumstance whatsoever (with or without notice to or knowledge of any Credit Party or guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of any Credit Party or any other guarantor of the Guaranteed Obligations, in bankruptcy or in any other instance (other than payment or performance in full of the Guaranteed Obligations). Each of the Guarantors hereby agrees that it has complete and absolute responsibility for keeping itself informed of the business, operations, properties, assets, condition (financial or otherwise) of the Company, the other Guarantors, any and all endorsers and any and all guarantors of the Guaranteed Obligations and of all other circumstances bearing upon the risk of nonpayment of the obligations evidenced by the Notes or the Guaranteed Obligations, and each of the Guarantors further agrees that the Beneficiaries shall have no duty, obligation or responsibility to advise it of any such facts or other information, whether now known or hereafter ascertained, and each Guarantor hereby waives any such duty, obligation or responsibility on the part of the Beneficiaries to disclose such facts or other information to such Guarantor.

When pursuing its rights and remedies hereunder against any of the Guarantors, any Beneficiary may, but shall be under no obligation to, pursue such rights and remedies as it may have against any other Credit Party or any other Person under a guaranty of the Guaranteed Obligations or any right of setoff with respect thereto, and any failure by such Beneficiary to pursue such other rights or remedies or to collect any payments from any such other Credit Party or Person or to realize upon any such guaranty or to exercise any such right of setoff, or any release of any such other Credit Party or Person or any such guaranty or right of setoff, shall not relieve the Guarantors of any liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of each of the Beneficiaries against the Guarantors. This Multiparty Guaranty shall remain in full force and effect until all Guaranteed Obligations shall have been satisfied by payment in cash or performance in full, upon the occurrence of which this Multiparty Guaranty shall, subject to paragraph 11K below, terminate.

**11K. Reinstatement.** This Multiparty Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time the payment, or any part thereof, of any of the Guaranteed Obligations is rescinded or otherwise must be restored or returned by any Beneficiary in connection with the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Credit Party or in connection with the application of applicable fraudulent conveyance or fraudulent transfer law, all as though such payments had not been made.

**11L. Payments.** Each Guarantor hereby agrees that the Guaranteed Obligations will be paid to each of the Beneficiaries pursuant to this Agreement without setoff or counterclaim, except for any taxes, assessments or levies required to be withheld by applicable law, in immediately available funds at the location and in the currency or currencies specified by such Beneficiary pursuant to this Agreement. Any amount required to be deducted and withheld shall be treated for all purposes of this Agreement and the Notes as having been paid to the party in respect of which such withholding was made.

**11M. Bound by Other Provisions.** Holdings agrees that it is bound by each covenant set forth in this Agreement and that it will make each representation and warranty set forth in this Agreement at the applicable times specified therefor, in each case to the extent the applicable provision pertains to "Holdings" or "New A&B." Each other Guarantor agrees that it is bound by each covenant set forth in this Agreement and that it will make each representation and warranty set forth in this Agreement at the applicable times specified therefor, in each case to the extent the applicable provision pertains to a Subsidiary (other than the Company).



**11N. Additional Guarantors.** The initial Guarantor(s) shall be such Person(s), if any, as are identified as “Guarantors” on the signature pages hereof. From time to time subsequent to the date hereof, Persons that are Subsidiaries or other Affiliates of the Company may become parties hereto as required by paragraphs 3A or 5G of this Agreement, as Guarantors (each an “**Additional Guarantor**”), by executing a Joinder Agreement. Upon delivery of any such Joinder Agreement to each of the Beneficiaries, notice of which is hereby waived by the Guarantors, each such Additional Guarantor shall be a Guarantor and shall be as fully a party hereto in such capacity as if such Additional Guarantor were an original signatory hereof. Each Guarantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Guarantor hereunder, nor by any election of the Beneficiaries not to cause any Subsidiary or other Affiliate of the Company to become an Additional Guarantor hereunder. This Multiparty Guaranty shall be fully effective as to any Guarantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Guarantor hereunder.

## **12. MISCELLANEOUS.**

**12A. Note Payments.** The Company agrees that, so long as any Purchaser shall hold any Note, it will make payments of principal of, interest on, and any Yield-Maintenance Amount payable with respect to, such Note, which comply with the terms of this Agreement, by wire transfer of immediately available funds for credit on the date due to the account or accounts of such Purchaser specified in the purchaser schedule attached hereto (in the case of all Notes other than Shelf Notes) or to the applicable Confirmation of Acceptance (in the case of each Series of Shelf Notes) or such other account or accounts in the United States as such Purchaser may from time to time designate in writing, notwithstanding any contrary provision herein or in any Note with respect to the place of payment. Each Purchaser agrees that, before disposing of any Note, it will make a notation thereon (or on a schedule attached thereto) of all principal payments previously made thereon and of the date to which interest thereon has been paid. The Company agrees to afford the benefits of this paragraph 12A to any Transferee which shall have made the same agreement as the Purchasers have made in this paragraph 12A.

**12B. Expenses.** Each of Holdings and the Company agrees, whether or not the transactions contemplated hereby shall be consummated, to pay, and save Prudential, each Purchaser and any Transferee harmless against liability for the payment of, all out-of-pocket expenses arising in connection with such transactions, including (i) all document production and duplication charges and the fees and expenses of any special counsel engaged by the Purchasers or any Transferee in connection with this Agreement and the other Transaction Documents, the transactions contemplated hereby and thereby and any subsequent proposed modification of, or proposed consent under, this Agreement or any other Transaction Document, whether or not such proposed modification shall be effected or proposed consent granted, and (ii) the reasonable costs and expenses, including attorneys’ fees, incurred by any Purchaser or any Transferee in enforcing any rights under this Agreement, the Notes or any other Transaction Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or any other Transaction Document or the transactions contemplated hereby or thereby or by reason of any Purchaser’s or any Transferee’s having acquired any Note, including without limitation costs and expenses incurred in any bankruptcy case of Holdings, the Company or any other Subsidiary. The obligations of Holdings and the Company under this paragraph 12B shall survive the transfer of any Note or portion thereof or interest therein by any Purchaser or any Transferee and the payment of any Note.

**12C. Consent to Amendments.** This Agreement may be amended, and Holdings or the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, if Holdings and the Company shall obtain the written consent to such amendment, action or omission to act, of the Required Holder(s) except that, (i) with the written consent of the holders of all Notes of a particular Series, and if an Event of Default shall have occurred and be continuing, of the holders of all Notes of all Series, at the time outstanding (and not without such written consents), the Notes of such Series may be amended or the provisions thereof waived to change the maturity thereof, to change or affect the principal thereof, or to change or affect the rate or time of payment of interest on or any Yield-Maintenance Amount payable with respect to the Notes of such Series, (ii) without the written consent of the holder or holders of all Notes at the time outstanding, no amendment to or waiver of the provisions of this Agreement shall change or affect the provisions of paragraph 7A or this paragraph 12C insofar as such provisions relate to proportions of the principal amount of the Notes of any Series, or the rights of any individual holder of Notes, required with respect to any declaration of Notes to be due and payable or with respect to any consent, amendment, waiver or declaration, (iii) with the written consent of Prudential (and not without the written consent of Prudential) the provisions of paragraph 2B may be amended or waived (except insofar as any such amendment or waiver would affect any rights or obligations with respect to the purchase and sale of Notes which shall have become Accepted Notes prior to such amendment or waiver), and (iv) with the written consent of all of the Purchasers which shall have become obligated to purchase Notes of any Series (and not without the written consent of all such Purchasers), any of the provisions of paragraphs 2B and 3 may be amended or waived insofar as such amendment or waiver would affect only rights or obligations with respect to the purchase and sale of the Notes of such Series or the terms and provisions of such Notes. Each holder of any Note at the time or thereafter outstanding shall be bound by any consent authorized by this paragraph 12C, whether or not such Note shall have been marked to indicate such consent, but any Notes issued thereafter may bear a notation referring to any such consent. No course of dealing between Holdings and the Company, on the one hand, and Prudential or the holder of any Note, on the other hand, nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of Prudential or any holder of such Note. As used herein and in the Notes, the term “**this Agreement**” and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

**12D. Form, Registration, Transfer and Exchange of Notes; Transfer Restriction.** The Notes are issuable as registered notes without coupons in denominations of at least \$2,500,000, except as may be necessary to reflect any principal amount not evenly divisible by \$2,500,000. The Company shall keep at its principal office a register in which the Company shall provide for the registration of Notes and of transfers of Notes. Upon surrender for registration of transfer of any Note at the principal office of the Company, the Company shall, at its expense, execute and deliver one or more new Notes of the same tenor and of the same aggregate principal amount, registered in the name of such transferee or transferees. At the option of the holder of any Note, such Note may be exchanged for other Notes of the same tenor and of any authorized denominations, of the same aggregate principal amount, upon surrender of the Note to be exchanged at the principal office of the Company. Whenever any Notes are so surrendered for exchange, the Company shall, at its expense, execute and deliver the Notes which the holder making the exchange is entitled to receive. Each prepayment of principal payable on each prepayment date upon each new Note issued upon any such transfer or exchange shall be in the same proportion to the unpaid principal amount of such new Note as the prepayment of principal payable on such date on the Note surrendered for registration of transfer or exchange bore to the unpaid principal amount of such Note. No reference need be made in any such new Note to any prepayment or prepayments of principal previously due and paid upon the Note surrendered for registration of transfer or exchange. Every Note surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer duly executed, by the holder of such Note or such holder’s attorney duly authorized in writing. Any Note or Notes issued in exchange for any Note or upon transfer thereof shall carry the rights to unpaid interest and interest to accrue which were carried by the Note so exchanged or transferred, so that neither gain nor loss of interest shall result from any such transfer or exchange. Upon receipt of written notice from the holder of any Note of the loss, theft, destruction or mutilation of such Note and, in the case of any such loss, theft or destruction, upon receipt of such holder’s unsecured indemnity agreement, or in the case of any such mutilation upon surrender and cancellation of such Note, the Company will make and deliver a new Note, of the same tenor, in lieu of the lost, stolen, destroyed or mutilated Note. Notwithstanding anything to the contrary herein, each Purchaser agrees, and each subsequent holder of a Note or purchaser of a participation in a Note by its acceptance of an interest in a Note agrees, that no Note shall be transferred to any Person which is not an Institutional Investor without the prior consent of the Company, such consent not to be unreasonably withheld. No transfer or

exchange of any Note or Notes shall be effective unless made pursuant to this paragraph 12D. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof.

**12E. Persons Deemed Owners; Participations.** Prior to due presentment for registration of transfer, the Company may treat the Person in whose name any Note is registered as the owner and holder of such Note for the purpose of receiving payment of principal of and premium, if any, and interest on such Note and for all other purposes whatsoever, whether or not such Note shall be overdue, and the Company shall not be affected by notice to the contrary. Subject to the preceding sentence, the holder of any Note may from time to time grant participations in all or any part of such Note to any Institutional Investor on such terms and conditions as may be determined by such holder in its sole and absolute discretion.

**12F. Survival of Representations and Warranties; Entire Agreement.** All representations and warranties contained herein, in any other Transaction Document or made in writing by or on behalf of Holdings, the Company or any other Credit Party in connection herewith or therewith shall survive the execution and delivery of this Agreement, the Notes and the other Transaction Documents, the transfer of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any Transferee, regardless of any investigation made at any time by or on behalf of any Purchaser or Transferee. Subject to the preceding sentence, this Agreement, the Notes, the other Transaction Documents and, until the effectiveness of the amendment and restatement thereof by this Agreement, the 2001 Agreement and the 2006 Agreement, embody the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to the subject matter hereof; provided, however, that the obligations of the Company to pay any Rate Lock Delayed Delivery Fee or Rate Lock Cancellation Fee, as such terms are defined in, and as such fees are payable under certain circumstances pursuant to the terms of, that certain letter dated May 10, 2012 from Prudential Investment Management, Inc. and accepted and agreed to by the Company, shall survive the execution and delivery of this Agreement.

**12G. Successors and Assigns.** All covenants and other agreements in this Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto (including, without limitation, any Transferee) whether so expressed or not.

**12H. Independence of Covenants.** All covenants hereunder shall be given independent effect so that if a particular action or condition is prohibited by any one of such covenants, the fact that it would be permitted by an exception to, or otherwise be in compliance within the limitations of, another covenant shall not (i) avoid the occurrence of a Default or Event of Default if such action is taken or such condition exists or (ii) in any way prejudice an attempt by the holder of any Note to prohibit, through equitable action or otherwise the taking of any action by Holdings or the Company or any other Subsidiary which would result in a Default or Event of Default. For the avoidance of doubt, if a particular action or condition is expressly permitted by an exception to a covenant and is not expressly prohibited by another provision in the same covenant, the taking of such action or the existence of such condition shall not result in a Default or Event of Default under such covenant.

**12I. Notices.** All written communications provided for hereunder (other than communications provided for under paragraph 2B) shall be sent by first class mail or nationwide overnight delivery service (with charges prepaid) and (i) if to Prudential, at the address set forth on the first page of this letter or at such other address as Prudential shall have specified to the Company in writing, (ii) if to any Purchaser, addressed as specified for such communications in the purchaser schedule attached hereto or to the applicable Confirmation of Acceptance or at such other address as any such Purchaser shall have specified to the Company in writing, (iii) if to any other holder of any Note, addressed to it at such address as it shall have specified in writing to the Company or, if any such holder shall not have so specified an address, then addressed to such holder in care of the last holder of such Note which shall have so specified an address to the Company and (iv) if to the Company, addressed to it at 822 Bishop Street, Honolulu, Hawaii 96801-3440, Attention: Chief Financial Officer (with a copy to Chief Legal Officer) or at such other address as the Company shall have specified to each holder of a Note in writing. Any communication pursuant to paragraph 2B shall be made by the method specified for such communication in paragraph 2B, and shall be effective to create any rights or obligations under this Agreement only if, in the case of a telephone communication, an Authorized Officer of the party conveying the information and of the party receiving the information are parties to the telephone call, and in the case of a telefacsimile communication, the communication is signed by an Authorized Officer of the party conveying the information, addressed to the attention of an Authorized Officer of the party receiving the information, and in fact received at the telefacsimile terminal the number of which is listed for the party receiving the communication in the Information Schedule or at such other telefacsimile terminal as the party receiving the information shall have specified in writing to the party sending such information.

**12J. Descriptive Headings.** The descriptive headings of the several paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

**12K. Satisfaction Requirement.** If any agreement, certificate or other writing, or any action taken or to be taken, is, by the terms of this Agreement, required to be satisfactory to Prudential, any Purchaser or the Required Holder(s), the determination of such satisfaction shall be made by Prudential, such Purchaser or the Required Holder(s), as the case may be, in the sole and exclusive judgment (exercised in good faith) of the Person(s) making such determination.

**12L. Governing Law.** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York, excluding choice of law principles of the law of such state that would permit the application of the laws of a jurisdiction other than such state.

**12M. Payments Due on Non-Business Days.** Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or interest, or Yield-Maintenance Amount payable with respect to, any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day, without interest for the period of extension.

**12N. Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**12O. Severalty of Obligations.** The sales of Notes to the Purchasers are to be several sales, and the obligations of Prudential and the Purchasers under this Agreement are several obligations. No failure by Prudential or any Purchaser to perform its obligations under this Agreement shall relieve any other Purchaser or Holdings or the Company of any of its obligations hereunder, and neither Prudential nor any Purchaser shall be responsible for the obligations of, or any action taken or omitted by, any other such Person hereunder.

**12P. Jurisdiction and Process; Waiver of Jury Trial.**

(i) Each of Holdings and the Company irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Agreement, the Notes or the other Transaction Documents. To the fullest extent permitted by applicable law, each of Holdings and the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(ii) Each of Holdings and the Company consents to process being served by or on behalf of any holder of Notes in any suit, action or proceeding of the nature referred to in paragraph 12P(i) by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, return receipt requested, to it at its address specified in paragraph 12I or at such other address of which such holder shall then have been notified pursuant to paragraph 12I. Each of Holdings and the Company agrees that such service upon receipt (a) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (b) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(iii) Nothing in this paragraph 12P shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may have to bring proceedings against Holdings or the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(iv) The parties hereto hereby waive trial by jury in any action brought on or with respect to this Agreement, the Notes or any other document executed in connection herewith or therewith.

**12Q. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

**12R. Binding Agreement.** When this Agreement is executed and delivered by Holdings, the Company, Prudential, the holders of the 2001 Agreement Notes, the holders of the Series D Notes and the Series AX, BX and CX Purchasers, it shall become a binding agreement among the Company, Prudential, the holders of the 2001 Agreement Notes, the holders of the Series D Notes and the Series AX, BX and CX Purchasers. This Agreement shall also inure to the benefit of each Purchaser which shall have executed and delivered a Confirmation of Acceptance, and each such Purchaser shall be bound by this Agreement to the extent provided in such Confirmation of Acceptance.

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**THE COMPANY:**

**ALEXANDER & BALDWIN, INC.,**

a Hawaii corporation to be converted into a Hawaii limited liability company named "Alexander & Baldwin, LLC"

By: /s/ Nelson N.S. Chun  
Its: Senior Vice President

By: /s/ Paul K. Ito  
Its: Vice President and Controller

The foregoing Agreement is hereby accepted as of the date first above written.

**PRUDENTIAL INVESTMENT MANAGEMENT, INC.**

By: /s/Cornelia Cheng  
Vice President

**THE PRUDENTIAL INSURANCE**

**COMPANY OF AMERICA**, as a holder of the 2001 Agreement Notes, a holder of the Series AX Notes, the sole holder of the Series BX Notes, the sole holder of the Series CX Notes and a holder of the Series D Notes

By: /s/ Cornelia Cheng  
Vice President

**PRUDENTIAL RETIREMENT INSURANCE**

**AND ANNUITY COMPANY**, as a holder of the Series AX Notes and a holder of the Series D Notes

By: Prudential Investment Management, Inc.,  
as investment manager

By: /s/ Cornelia Cheng  
Vice President

**GIBRALTAR LIFE INSURANCE CO., LTD.**, as a holder of the Series AX Notes and a holder of the Series D Notes

By: Prudential Investment Management (Japan), Inc.,  
as Investment Manager

By: Prudential Investment Management, Inc.,  
as Sub-Advisor

By: /s/ Cornelia Cheng  
Vice President

**THE PRUDENTIAL LIFE INSURANCE**

**COMPANY, LTD.**, as a holder of the Series AX Notes and a holder of the Series D Notes

By: Prudential Investment Management (Japan), Inc.,  
as Investment Manager

By: Prudential Investment Management, Inc.,  
As Sub-Advisor

By: /s/ Cornelia Cheng  
Vice President

**PRUCO LIFE INSURANCE COMPANY**, as a holder of the 2001 Agreement Notes and a holder of the Series D Notes

By: /s/ Cornelia Cheng  
Vice President

**PRUCO LIFE INSURANCE**  
**COMPANY OF NEW JERSEY**, as a holder of the 2001 Agreement Notes

By: /s/ Cornelia Cheng  
Vice President

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**CREDIT AGREEMENT**

dated as of June 4, 2012

among

**ALEXANDER & BALDWIN, INC.,**  
as the Borrower,

**BANK OF AMERICA, N.A.,**  
as Agent, Swing Line Lender and L/C Issuer,

and

The Other Lenders Party Hereto

**FIRST HAWAIIAN BANK,**  
as Syndication Agent and L/C Issuer

**AMERICAN AGCREDIT, PCA**

and

**WELLS FARGO BANK, N.A.,**  
as Co-Documentation Agents

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

and

**FIRST HAWAIIAN BANK,**  
as Joint Lead Arrangers and Co-Book Managers

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## **SCHEDULES**

- 1.01 Existing Letters of Credit
- 2.01 Commitments and Applicable Percentages
- 5.07 Conflicting Agreements
- 7.02 Existing Liens
- 10.02 Agent's Office; Certain Addresses for Notices

## **EXHIBITS**

- A Committed Loan Notice
  - B Swing Line Loan Notice
  - C Note
  - D Forms of U.S. Tax Compliance Certificates
  - E-1 Assignment and Assumption
  - E-2 Administrative Questionnaire
  - F Compliance Certificate
  - G Guaranty
-

## CREDIT AGREEMENT

This CREDIT AGREEMENT (“Agreement”) is entered into as of June 4, 2012, among ALEXANDER & BALDWIN, INC., a Hawaii corporation which will be converted to Alexander & Baldwin, LLC, a Hawaii limited liability company in accordance with the terms hereof (the “Borrower”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), BANK OF AMERICA, N.A., as Agent, Swing Line Lender and L/C Issuer, and FIRST HAWAIIAN BANK, as L/C Issuer.

The Borrower has requested that the Lenders provide a revolving credit facility, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### ARTICLE I.

#### DEFINITIONS AND ACCOUNTING TERMS

**1.01 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

“Accredited Appraiser” means an appraiser selected by the Agent and reasonably acceptable to the Required Lenders.

“Additional Guarantor” has the meaning set forth in Section 6.09.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit E-2 or any other form approved by the Agent.

“Affiliate” means, without duplication, any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, another Person. A Person shall be deemed to control another Person if such first Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of the Loan Documents, the term “Affiliate,” when used in reference to the Borrower, shall not include Subsidiaries of the Borrower.

“Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Agent’s Office” means the Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify to the Borrower and the Lenders in writing.

“Aggregate Commitments” means, as of any date of determination, the Commitments of all the Lenders. The initial amount of the Aggregate Commitments in effect on the Closing Date is \$260,000,000. The Aggregate Commitments may be increased or decreased from time to time as provided herein.

“Agreement” means this Credit Agreement.

“Agricultural Land” means land owned in fee by Holdings or its Subsidiaries which is located in the State of Hawaii and zoned exclusively for agricultural purposes, but excluding watershed land, conservation land and pastureland.

“Applicable Cap Rates” means (i) 7.50% for Investment Properties, (ii) 9.50% for Agricultural Land which is leased to third parties and (iii) 9.50% for Leased Non-Agricultural Land.

“Applicable Percentage” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Commitment at such time. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or other documentation pursuant to which such Lender becomes a party hereto, as applicable. The Applicable Percentages shall be subject to adjustment as provided in Section 2.16.

“Applicable Rate” means with respect to the commitment fee payable pursuant to Section 2.09(a), the Eurodollar Rate, the Base Rate and the Letter of Credit Fee, from time to time, the following percentages per annum, based upon the Total Debt to Total Adjusted Asset Value Ratio as set forth below:

Pricing Level	Total Debt to Total Adjusted Asset Value Ratio	Commitment Fee	Eurodollar Rate	Base Rate	Letter of Credit Fee
I	> 0.40 to 1.0	0.35%	2.50%	1.50%	2.50%
II	< 0.40 to 1.0 but > 0.30 to 1.0	0.30%	2.20%	1.20%	2.20%
III	< 0.30 to 1.0 but > 0.20 to 1.0	0.25%	1.90%	0.90%	1.90%
IV	< 0.20 to 1.0 but > 0.10 to 1.0	0.20%	1.70%	0.70%	1.70%
V	< 0.10 to 1.0	0.15%	1.50%	0.50%	1.50%

The Applicable Rate in effect on the Closing Date through the date on which the Borrower is required to deliver a Compliance Certificate for the fiscal quarter ended as of the last day of the first full fiscal quarter to occur after the Initial Funding Date shall be based on Pricing Level III. Thereafter the Applicable Rate shall be determined by reference to the Total Debt to Total Adjusted Asset Value Ratio as set forth in the most recent Compliance Certificate received by the Agent pursuant to Section 6.01(c). Any increase or decrease in the Applicable Rate resulting from a change in the Total Debt to Total Adjusted Asset Value Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.01(c); provided, however, that if such Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level I shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered in accordance with Section 6.01(c), whereupon the Applicable Rate shall be adjusted based upon the calculation of the Total Debt to Total Adjusted Asset Value Ratio contained in such Compliance Certificate.

“Applicable Value” means, as of any date of determination with respect to the calculation of Non-Recourse Debt, (i) if the amount of such excluded Non-Recourse Debt is equal to or less than 70% of the book value of the associated Development Real Properties, the book value of the associated Development Real Properties or (ii) if the amount of such excluded Non-Recourse Debt exceeds 70% of the book value of the associated Development Real Properties but is equal to or less than 70% of the Appraised Value of the associated Development Real Properties, the Appraised Value of the associated Development Real Properties.

“Appraised Value” means, subject to the requirements of Section 6.07, to the extent elected by the Borrower, an appraisal performed by an Accredited Appraiser at the Borrower’s option, which appraisal assumes no greater than a twelve month marketing time frame.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arrangers” means each of (a) Merrill Lynch, Pierce, Fenner & Smith Incorporated and (b) First Hawaiian Bank, each in its capacity as a joint lead arranger and co-book manager.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit E-1 or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Agent.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Authorized Officer” means, with respect to any Loan Party, any officer of such Loan Party designated as an “Authorized Officer” for the purpose of this Agreement in a certificate executed by one of such Loan Party’s then existing Authorized Officers (as previously identified to the Agent). Any action taken under this Agreement on behalf of a Loan Party by any individual who on or after the Closing Date shall have been an Authorized Officer of such Loan Party and whom the Agent or any of the Lenders in good faith believes to be an Authorized Officer of such Loan Party at the time of such action shall be binding on such Loan Party even though such individual shall have ceased to be an Authorized Officer of such Loan Party, unless the Borrower or such Loan Party shall have provided the Agent with a certificate executed by one of such Loan Party’s then existing Authorized Officers (as previously identified to the Agent) indicating that such individual is no longer an “Authorized Officer.”

“Availability Period” means the period from and including the Initial Funding Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) the Eurodollar Rate plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Committed Loan that bears interest based on the Base Rate.

“Borrower” means (a) prior to the Conversion, the Original Alexander & Baldwin and (b) following the Conversion and at all times thereafter, Alexander & Baldwin, LLC, a Hawaii limited liability company.

“Borrower Materials” has the meaning specified in Section 6.01.

“Borrowing” means a Committed Borrowing or a Swing Line Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Agent’s Office is located and, if such day relates to any Eurodollar Loan, means any such day that is also a London Banking Day.

“Capitalized Lease Obligation” means, with respect to any Person, any rental obligation of such Person which, under GAAP in effect as of the Closing Date, is or will be required to be capitalized on the books of such Person, taken at the amount thereof accounted for as indebtedness (net of interest expense) in accordance with such principles.

“Cash Collateralize” means to pledge and deposit with or deliver to the Agent, for the benefit of one or more of the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably

satisfactory to the Agent and the L/C Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority) or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith by any Governmental Authority and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means:

(a) the acquisition, after the date hereof, by any “person” or “group” (as such terms are used in Sections 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934) (but excluding any employee benefit plan of such persons or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) of outstanding shares of voting stock of (x) prior to the completion of the Restructuring Transactions, the Borrower (other than Holdings as contemplated pursuant to clause (c) below) representing more than 50% of voting control of Borrower and (y) thereafter, Holdings, representing more than 50% of voting control of Holdings; or

(b) after the merger of A&B Merger Corporation, a Hawaii corporation, with and into Holdings in connection with the Restructuring Transactions, resulting in 100% of the Equity Interests of the Borrower being owned by Holdings, the failure of Holdings to own 100% of the Equity Interests of the Borrower at any time thereafter.

“Closing Date” means June 4, 2012.

“Code” means the Internal Revenue Code of 1986.

“Commitment” means, as to each Lender, its obligation to (a) make Committed Loans to the Borrower pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption or other documentation pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Committed Borrowing” means a borrowing consisting of simultaneous Committed Loans of the same Type and, in the case of Eurodollar Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Committed Loan” has the meaning specified in Section 2.01.

“Committed Loan Notice” means a notice of (a) a Committed Borrowing, (b) a conversion of Committed Loans from one Type to the other, or (c) a continuation of Eurodollar Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Compliance Certificate” means a certificate signed in the name of the Borrower by an Authorized Officer of the Borrower in substantially the form of Exhibit F.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Interest Expense” means, for any period of determination, for Holdings and its Subsidiaries on a consolidated basis the sum of all amounts that would, in accordance with GAAP, be deducted in computing Consolidated Net Income for the fiscal periods in question on account of interest, including without limitation, imputed interest in respect of Capitalized Lease Obligations, fees in respect of letters of credit and bankers’ acceptance financing and amortization of debt discount and expense.

“Consolidated Net Income” means, for any period of determination, the net income from continuing operations of Holdings and its Subsidiaries on a consolidated basis as determined in accordance with GAAP, provided that the proceeds of any sale or condemnation of real estate that is treated as a discontinued operation pursuant to GAAP shall be treated as income from continuing operations to the extent the net proceeds of such sale or condemnation have been reinvested in real estate within twelve months from the date of such sale or condemnation.

“Consolidated Net Income Before Taxes” means, for any period of determination, Consolidated Net Income for Holdings and its Subsidiaries on a consolidated basis for such period plus the sum of all deferred and current Federal, state, local and foreign taxes on income that are deducted in accordance with GAAP in computing Consolidated Net Income for such period.

“Consolidated Shareholders’ Equity” means, at any time of determination thereof, for Holdings and its Subsidiaries on a consolidated basis determined in accordance with GAAP, the sum of (i) consolidated shareholders’ equity, and (ii) any consolidated mezzanine equity (or other temporary or non-permanent equity) resulting from the application of the Financial Accounting Standards Board Accounting Standards Codification Topic 718, and related stock based compensation awards issued to management which are puttable upon a change of control; provided, that any determination of Consolidated Shareholders’ Equity shall exclude all non-cash adjustments to Consolidated Shareholders’ Equity resulting from the application of the Financial Accounting Standards Board Accounting Standards Codification Topic 960.

“Consolidated Total Assets” means, at any time of determination thereof, the consolidated total assets of Holdings and its Subsidiaries on a consolidated basis determined in accordance with GAAP.

“Conversion” means the conversion of Original Alexander & Baldwin into Alexander & Baldwin, LLC, a Hawaii limited liability company, for tax purposes as part of the Restructuring Transaction and in which Alexander & Baldwin, LLC retains all of the assets of Original Alexander & Baldwin other than the stock of Matson Navigation Company, Inc. and ABHI-Crockett, Inc.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Debt” means, as to any Person at the time of determination thereof without duplication, (a) any indebtedness of such Person (i) for borrowed money, including commercial paper and revolving credit lines, (ii) evidenced by bonds, debentures or notes or otherwise representing extensions of credit, whether or not representing obligations for borrowed money or (iii) for the payment of the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, regardless of when such liability or other obligation is due and payable, (b) Capitalized Lease Obligations of such Person, (c) Guarantees, assumptions and endorsements by such Person (other than endorsements of negotiable instruments for collection in the ordinary course of business) of Debt of another Person of the types described in clauses (a) and (b) hereof, and (d) Debt of another Person (whether or not assumed) that is secured by Liens on the property or other assets of such Person. “Debt” shall not include a reimbursement obligation incurred in connection with a standby Letter of Credit issued (i) in support of trade payables or (ii) as condition to receiving (A) a governmental entitlement, (B) a performance bond or (C) a performance guaranty, in each case under the immediately preceding clauses (i) and (ii) to the extent such reimbursement obligation is contingent and to the extent the aggregate amount of such standby letters of credit does not exceed \$10,000,000.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Agent, the L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Agent, the L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Agent or the Borrower, to confirm in writing to the Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to the Borrower, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Development Real Properties” means, at any time of determination for Holdings and its Subsidiaries, any real property asset under development, construction, renovation or rehabilitation that (i) is then treated as an asset under development under GAAP, (ii) is located in the State of Hawaii, the Territory of Guam or the continental United States, and (iii) has been designated by the Borrower in a written notice to the Agent as a “Development Real Property.”

“Dollar” and “\$” mean lawful money of the United States.

“EBITDA” means, for any period, for Holdings and its Subsidiaries on a consolidated basis, Consolidated Net Income Before Taxes for such period plus, to the extent deducted in the calculation thereof, Consolidated Interest Expense, depreciation and amortization expense, non-cash stock-based compensation expense, non-cash pension, non-cash postretirement and non-cash nonqualified expenses, and one-time expenses related to the Restructuring Transaction incurred during the fiscal year ending December 31, 2012 in an aggregate amount not to exceed \$11,000,000; provided that EBITDA shall exclude non-cash gains or losses resulting from the write-up or write-down of assets.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Environmental and Safety Laws” means all Federal, state and local laws, regulations and ordinances, relating to the discharge, handling, disposition or treatment of Hazardous Materials and other substances or the protection of the environment or of employee health and safety, including, without limitation, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et. seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et. seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et. seq.), the Clean Air Act (42 U.S.C. Section 7401 et. seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et. seq.), the Occupational Safety and Health Act (29 U.S.C. Section 651 et. seq.) and the Emergency Planning and Community Right-To-Know Act (42 U.S.C. Section 11001 et. seq.).

“Environmental Liabilities and Costs” means as to any Person, all liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages, treble damages, contribution, cost recovery, costs and expenses (including all fees, disbursements and expenses of counsel,



expert and consulting fees, and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand, by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, permit, order or agreement with any Federal, state or local governmental authority or other Person, arising from environmental, health or safety conditions, or the release or threatened release of a contaminant, pollutant or Hazardous Material into the environment, resulting from the operations of such Person or its subsidiaries, or breach of any Environmental and Safety Law or for which such Person or its Subsidiaries is otherwise liable or responsible.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any corporation which is a member of the same controlled group of corporations as the Borrower within the meaning of section 414(b) of the Code, or any trade or business which is under common control with the Borrower within the meaning of section 414(c) of the Code.

“Eurodollar Loan” means a Committed Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”

“Eurodollar Rate” means:

(a) for any Interest Period with respect to a Eurodollar Loan, the rate per annum equal to (i) the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, if such rate is not available at such time for any reason, the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to (x) a Base Rate Loan on any date or (y) a Swingline Loan on any date, in each case the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan or Swingline Loan, as applicable, being made or maintained and with a term equal to one month would be offered by Bank of America’s London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Taxes” means, any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or 3.01(c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing Credit Agreement” means that certain Credit Agreement, dated as of August 5, 2011, among Alexander & Baldwin, Inc., as the borrower, First Hawaiian Bank, as administrative agent, and the lenders party thereto.

“Existing Letters of Credit” means those letters of credit set forth on Schedule 1.01.

“FATCA” means Sections 1471 through 1474 of the Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Agent.

“Fee Letters” means (i) the administrative agent fee letter agreement, dated May 4, 2012, among the Borrower, the Agent and Merrill Lynch, Pierce, Fenner & Smith Incorporated and (ii) the fee letters agreement dated May 4, 2012 among the Borrower, the Agent and First Hawaiian Bank.

“Fixed Charges” means as of any date of determination for Holdings and its Subsidiaries on a consolidated basis, Consolidated Interest Expense for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date, plus preferred dividends of Holdings accrued during the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date, plus scheduled principal payments (excluding any “balloon payment” and amounts outstanding under this Agreement that are classified as current liabilities under GAAP but only to the extent that no Default or Event of Default then

exists under this Agreement or the Note Purchase Agreement) of Holdings and its Subsidiaries for the period of four consecutive fiscal quarters next succeeding such date of determination.

“Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) EBITDA for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date to (b) Fixed Charges as of such date.

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary that is incorporated or organized under the laws of a country other than the United States or any state thereof or the District of Columbia; provided that any Subsidiary that is not described in the preceding clause, but which owns voting stock in one or more Foreign Subsidiaries but owns no other material assets and does not engage in any trade or business (other than acting as a holding company for such voting stock in Foreign Subsidiaries) shall be deemed to be a Foreign Subsidiary hereunder; provided further that any Subsidiary that is disregarded as separate from its owner for United States federal income tax purposes and which owns voting stock in one or more Foreign Subsidiaries shall be deemed to be a Foreign Subsidiary.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the Financial Accounting Standards Board Accounting Standards Codification or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, without duplication, any obligation, contingent or otherwise, of any Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation of any other Person (the primary obligor) in any manner, directly or indirectly, and including any obligation: (a) to make any loan, advance or capital contribution, or for the purchase of any property from, any Person, in each case for the purpose of enabling such Person to maintain working capital, net worth or any other balance sheet condition or to pay debts, dividends or expenses except for advances, deposits and initial payments made in the usual and ordinary course of business for the purchase or acquisition of property or services; (b) to purchase materials, supplies or other property or services if such obligation requires that payment for such materials, supplies or other property or services be made regardless of whether or not delivery of such materials, supplies or other property or services is ever made or tendered; (c) to rent or lease (as lessee) any real or personal property (except for leases in effect on December 31, 2010) if such obligation is absolute and unconditional under conditions not customarily found in commercial leases then in general use; or (d) of any partnership or joint venture in which such Person is a general partner or joint venturer if such obligation is not expressly non-recourse to such Person; but excluding (i) a completion guarantee issued in connection with a real estate development project to the extent contingent and not constituting a direct or indirect obligation to re-pay Debt and (ii) environmental indemnification agreements.

“Guarantor” means Holdings and each Additional Guarantor.

“Guaranty” means the Guaranty, dated as of the Initial Funding Date, executed by Holdings in favor of the Agent, substantially in the form of Exhibit G.

“Hazardous Materials” means (a) any material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances” or any other formulations intended to define, list or classify substances by reason of their deleterious properties, (b) any oil, petroleum or petroleum derived substance, (c) any flammable substances or explosives, (d) any radioactive materials, (e) asbestos in any form, (f) electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million, (g) pesticides or (h) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental agency or authority or which may or could pose a hazard to the health and safety of persons in the vicinity thereof.

“Holdings” means A & B II, Inc., a Hawaii corporation (to be renamed Alexander & Baldwin, Inc. prior to the completion of the Restructuring Transactions), which will be a new holding company formed to own 100% of the Equity Interests of the Borrower upon completion of the Restructuring Transactions.

“Honor Date” means the date of any payment by the L/C Issuer under a Letter of Credit.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Initial Funding Date” means the first Business Day following the Closing Date that all the conditions precedent in Section 4.02 and Section 4.03 are satisfied or waived in accordance with Section 10.01.

“Interest Payment Date” means, (a) as to any Eurodollar Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurodollar Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the first Business Day after the end of each March, June, September and December and the Maturity Date.

“Interest Period” means, as to each Eurodollar Loan, the period commencing on the date such Eurodollar Loan is disbursed or converted to or continued as a Eurodollar Loan and ending on the date one week, two weeks or one, two, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice; provided that:

- (i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;
- (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
- (iii) no Interest Period shall extend beyond the Maturity Date.

“Investment Properties” means developed real estate investment properties located in the State of Hawaii or the continental United States and owned in fee by Holdings or its Subsidiaries, but excluding Development Real Properties, Agricultural Land (whether leased to third parties or operated by Holdings or any of its Subsidiaries), Leased Non-Agricultural Land and agriculture-related properties such as hydroelectric facilities and solar equipment.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor the L/C Issuer and relating to such Letter of Credit.

“Joint Venture Entity” has the meaning set forth in the definition of Total Adjusted Asset Value.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means, as the context requires, (a) First Hawaiian Bank in its capacity as issuer of Letters of Credit hereunder (including certain Existing Letters of Credit), (b) Bank of America, N.A. in its capacity as issuer of Letters of Credit hereunder (including certain Existing Letters of Credit), and (c) any successor issuer of Letters of Credit hereunder. The term “L/C Issuer” when used with respect to a Letter of Credit or the L/C Obligations relating to a Letter of Credit shall refer to the L/C Issuer that issued such Letter of Credit.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Leased Non-Agricultural Land” means land owned in fee by Holdings or its Subsidiaries, other than Agricultural Land, located in the State of Hawaii or the continental United States and leased to Third Parties on arms’-length terms, which land has improvements situated thereon in which none of Holdings or its Subsidiaries has an ownership interest.

“Lender” has the meaning specified in the introductory paragraph hereto and, unless the context requires otherwise, includes the Swing Line Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

“Letter of Credit” means any letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit. Notwithstanding anything to the contrary contained herein, a letter of credit issued by an L/C Issuer other than Bank of America shall not be a “Letter of Credit” for purposes of the Loan Documents until such time as the Agent has been notified of the issuance thereof by the applicable L/C Issuer and has confirmed with the L/C Issuer that there exists adequate availability under the Aggregate Commitments to issue such letter of credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(i).

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$100,000,000 and (b) the Aggregate Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments.

“Lien” means any mortgage, deed of trust, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any purchase money mortgage, conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of or agreement to give any financing statement (exclusive of filings for precautionary purposes only) under the Uniform Commercial Code of any jurisdiction).

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Committed Loan or a Swing Line Loan.

“Loan Documents” means this Agreement, each Note, each Issuer Document, the Guaranty, any additional guaranty provided by an Additional Guarantor pursuant to the terms of Section 6.09, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15 and the Fee Letters.

“Loan Parties” means, collectively, the Borrower, Holdings and any Additional Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, on the business, condition (financial or otherwise) or operations of the Holdings and its Subsidiaries taken as a whole (it being understood and agreed that the Restructuring Transactions contemplated by the Separation Agreement, in and of themselves shall not be deemed to constitute a Material Adverse Effect); (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document; or (c) a material adverse effect on the material rights and remedies of the Lenders taken as a whole, which material adverse effect was not caused by any Lender.

“Matson, Inc.” means Alexander & Baldwin Holdings, Inc. (to be renamed Matson, Inc. upon completion of the Restructuring Transactions).

“Matson Credit Agreement” means that certain Credit Agreement dated as of August 5, 2011 among Matson Navigation Company, Inc., as borrower, the lenders party thereto and First Hawaiian Bank, as administrative agent.

“Maturity Date” means the fifth anniversary of the Initial Funding Date. If such date is not a Business Day, the Maturity Date shall be the next Business Day.

“Minimum Collateral Amount” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 100% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.15(a)(i), (a)(ii) or (a)(iii), an amount equal to 100% of the Outstanding Amount of all L/C Obligations, and (iii) otherwise, an amount equal to 100% of the stated amount of the applicable Letter of Credit.

“Moody's” means Moody's Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any Plan which is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

“Net Operating Income from Investment Properties” means, for any period of determination thereof for Holdings and its Subsidiaries on a consolidated basis, the consolidated cash revenues attributable to all Investment Properties less operating expenses, real property taxes, taxes on gross revenue, common area maintenance expenses, ground and other rents, other rental expenses, and charges for property management related thereto for the most recently ended fiscal quarter multiplied by four, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

“Net Operating Income from Leased Agricultural Land” means, for any period of determination thereof for Holdings and its Subsidiaries on a consolidated basis, the consolidated cash revenues attributable to all Agricultural Land which is leased to third parties on arms'-length terms less operating expenses, real property taxes, taxes on gross revenue, and charges for property management related thereto for the most recently ended fiscal quarter multiplied by four, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

“Net Operating Income from Leased Non-Agricultural Land” means, for any period of determination thereof for Holdings and its Subsidiaries, the consolidated cash revenues attributable to all Leased Non-Agricultural Land less operating expenses, real property taxes, taxes on gross revenue, and charges for property management related thereto for the most recently ended fiscal quarter multiplied by four, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

“Net Operating Income from Unencumbered Investment Properties” means, for any period of determination thereof for Holdings and its Subsidiaries on a consolidated basis, the consolidated cash revenues attributable to Unencumbered Investment Properties less operating expenses, real property taxes, taxes on gross revenue, common area maintenance expenses, ground and other rents, other rental expenses, and charges for property management related thereto for the most recently ended fiscal quarter multiplied by four, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

“Net Operating Income from Unencumbered Leased Agricultural Land” means, for any period of determination thereof for Holdings and its Subsidiaries on a consolidated basis, the consolidated cash revenues attributable to Unencumbered Leased Agricultural Land, less operating expenses, real property taxes, taxes on gross revenue, and charges for property management related thereto for the most recently ended fiscal quarter multiplied by four, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

“Net Operating Income from Unencumbered Leased Non-Agricultural Land” means, for any period of determination thereof for Holdings and its Subsidiaries, the consolidated cash revenues attributable to all Unencumbered Leased Non-Agricultural Land less operating expenses, real property taxes, taxes on gross revenue, and charges for property management related thereto for the most recently ended fiscal quarter multiplied by four, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, or state and federal income taxes.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (ii) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Recourse Debt” means, with respect to any Loan Party or Subsidiary, any (i) Debt that is not Recourse Debt, and (ii) fully recourse mortgage and similar financings obtained by a Subsidiary of the Borrower if the mortgaged real property constitutes substantially all of the assets of such Subsidiary; provided that solely with respect to the definition of Principal Credit Facility and Section 7.10, Non-Recourse Debt shall also include loans and credit facilities at all times during which the recourse portion of such loans and credit facilities (including commitments in respect thereof) is not in excess of \$40,000,000.

“Note” means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit C.

“Note Purchase Agreement” means that certain Amended and Restated Note Purchase and Private Shelf Agreement dated as of June 4, 2012 among the Borrower and the noteholders party thereto, as such agreement may be amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

“Notice Date” has the meaning set forth in Section 2.03(c)(i).

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising under any Loan Document and including interest and fees that accrue after the commencement by or against the Borrower or any Subsidiary or Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Original Alexander & Baldwin” means Alexander & Baldwin, Inc., a Hawaii corporation which was in existence prior to giving effect to the Restructuring Transactions, and which is the initial Borrower under this Agreement.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means (i) with respect to Committed Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Committed Loans and Swing Line Loans, as the case may be, occurring on such date; and (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Permitted Assets” means (a) where any Property Sub or any assets of a Property Sub or of the Borrower have been sold or otherwise transferred, assets, including real estate, to be used by the Borrower or any Property Sub in conducting Property Development Activities, the Property Management Business or the agribusiness and (b) in all other instances, assets, including real estate, to be used in conducting Property Development Activities, the Property Management Business, the agribusiness.

“Permitted Debt” means (a) any unsecured Debt of the Borrower or a Subsidiary (exclusive of Debt owed to the Borrower or a Subsidiary) as selected by the Borrower, so long as the aggregate amount of all proceeds from sales or other dispositions which are made after December 31, 2011 pursuant to clauses (d), (e) or (f) of Section 7.04 and that are applied to the prepayment such unsecured debt pursuant to this clause (a), do not exceed \$150,000,000 and (b) after the \$150,000,000 basket in clause (a) has been fully utilized, all unsecured Debt of the Borrower and Subsidiaries (exclusive of any Debt owed to the Borrower or a Subsidiary thereof) on a pro rata basis.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any “employee pension benefit plan” (as such term is defined in section 3 of ERISA) which is or has been established or maintained, or to which contributions are or have been made, by the Borrower or any ERISA Affiliate.

“Platform” has the meaning specified in Section 6.01.

“Public Lender” has the meaning specified in Section 6.01.

“Principal Credit Facility” means (a) the Note Purchase Agreement or (b) any other credit agreement, loan agreement, note purchase agreement or similar agreement under which credit facilities in the aggregate principal or commitment amount of at least \$40,000,000 are provided for, in each case, as any of the same may be amended, restated, supplemented or otherwise modified from time to time; provided, however that the immediately preceding clause (b) shall exclude (i) all purchase money debt, (ii) all construction and other project financings, and (iii) all Non-Recourse Debt.

“Priority Debt” means, with respect to the Borrower, Holdings and their Subsidiaries, at any time of determination and without duplication, the sum of (a) Debt of Holdings and the Borrower secured by a Lien, plus (b) Debt of Subsidiaries of Holdings (other than the Borrower), regardless of whether such Debt is secured or unsecured.

“Priority Debt Limit” means, at any time of determination, an amount equal to 20% of Total Adjusted Asset Value (as of the end of the most-recent fiscal quarter of the Borrower).

“Property Development Activities” means land acquisition and development activities, the principal objective of which is to acquire and develop real property for sale or other disposition.

“Property Management Business” means the managing, leasing, selling and purchasing of real property.

“Property Subs” means Subsidiaries that exist on the date hereof or that are subsequently formed or acquired and, in each case, whose principal business activities are to engage in Property Development Activities.

“Recipient” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Recourse Debt” means, with respect to any Loan Party or Subsidiary, any Debt, in respect of which contractual recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, and other similar exceptions to recourse liability) is to such Person.

“Register” has the meaning specified in Section 10.06(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Committed Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders (except that the amount of any participation in any Swing Line Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that has not been reallocated to and funded by another Lender shall be deemed to be “held” by the Lender that is the Swing Line Lender or L/C Issuer, as the case may be, in making such determination).

“Responsible Officer” means each of the treasurer, the chief financial officer, principal accounting officer, controller and chief legal officer of the Borrower and any other officer of the Borrower whose responsibilities include monitoring the Borrower’s compliance with the provisions of this Agreement or matters referenced herein. Any document delivered hereunder that is signed by a Responsible Officer of the Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Borrower.

“Restricted Payments” has the meaning specified in Section 7.12.

“Restructuring Transactions” means the publicly announced transactions pursuant to which the businesses of Original Alexander & Baldwin will be split into two independent publicly traded companies, including without limitation (i) the merger of A&B Merger Corp. with and into Original Alexander & Baldwin, (ii) the Conversion, (iii) the contribution of the Equity Interests of Matson Navigation Company, Inc. to Matson, Inc., (iv) the contribution of the Equity Interests of ABHI-Crockett, Inc. to Matson, Inc., (v) the contribution of the limited liability company interests of Alexander & Baldwin, LLC to Holdings, (vi) the capital contribution by Matson, Inc. of approximately \$160 million to Holdings and (vii) the subsequent spinoff of Holdings to the public stockholders.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. and any successor thereto.

“Sanction(s)” means any international economic sanction administered or enforced by OFAC, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Separation Agreement” means the Separation Agreement to be entered into on May 30, 2012, by and between Matson, Inc. and Holdings, and shall include the schedules and exhibits relating thereto, and all other agreements entered into in connection with the Restructuring Transaction.

“Significant Line of Business” means a line of business or an operating division, the book value of which is, on the date of determination, equal to 5% or more of Consolidated Shareholders’ Equity.

“Significant Subsidiary” means any direct or indirect Subsidiary of Holdings (other than the Borrower), the net worth of which is, on the date of determination, 5% or more of Consolidated Shareholders’ Equity.

“Subsidiary” means, as to any Person, any company, whether operating as a corporation, joint venture, partnership, limited liability company or other entity, which is consolidated with such Person in accordance with GAAP. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Holdings.

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$50,000,000 and (b) the Aggregate Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Commitments.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Third Party” means any Person other than the Borrower and its Subsidiaries.

“Total Adjusted Asset Value” means, at any date of determination thereof, without duplication, (a) real estate leasing property value (which shall be deemed to equal the sum of (i) Net Operating Income from Investment Properties divided by the Applicable Cap Rates, (ii) Net Operating Income from Leased Agricultural Land divided by the Applicable Cap Rates and (iii) Net Operating Income from Leased Non-Agricultural Land divided by the Applicable Cap Rates, plus (b) the greater of (x) EBITDA for the period of four (4) consecutive fiscal quarters most recently ended generated from the agricultural division of Holdings and its Subsidiaries (excluding, as an abundance of caution, Net Operating Income from Leased Agricultural Land and including, as an abundance of caution, income generated from electricity producing assets) divided by 20.0%, and (y) the Appraised Value of Agricultural Land which is not leased to third parties (provided that the determination of whether or not to obtain the appraisal necessary to determine the Appraised Value shall be made at the option of the Borrower and if the Borrower does not elect to have an appraisal performed, then clause (x) will be deemed to be greater than clause (y)), plus (c) the book value of Development Real Properties owned by Holdings or any of its Subsidiaries (with such book value, in the case of a less than wholly-owned subsidiary or any other entity (other than a Subsidiary) in which Holdings or any of its Subsidiaries owns an equity interest (each, a “Joint Venture Entity”), to be (i) with respect to a consolidated Joint Venture Entity, equal to the net assets of such Joint Venture Entity less the noncontrolling interest in such Joint Venture Entity as reflected on the consolidated balance sheet of Holdings required to be delivered pursuant to Section 6.01(a) or (b), or (ii) with respect to an unconsolidated Joint Venture Entity, equal to the book value of Holdings’ direct or indirect investment in such Joint Venture Entity), provided that the aggregate amount under this clause (c) shall not comprise more than 30% of consolidated total assets of Holdings and its Subsidiaries (less cash, cash equivalents, marketable securities, goodwill, noncontrolling interest and pension assets) in accordance with GAAP for the most recent fiscal quarter.

“Total Debt to Total Adjusted Asset Value Ratio” means, as at any time of determination thereof, the ratio of (i) all Debt of Holdings and its Subsidiaries on a consolidated basis as of such time to (ii) Total Adjusted Asset Value as of such time.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Type” means, with respect to a Committed Loan, its character as a Base Rate Loan or a Eurodollar Loan.

“Undeveloped Land” means (a) land owned in fee by the Borrower or any Subsidiary as of December 31, 2011 which at the time of determination has not been developed for commercial or residential purposes, (b) land acquired by the Borrower or any Subsidiary subsequent to December 31, 2011 pursuant to a Code section 1031 like-kind exchange (in exchange for land described in clause (a) or (b) of this definition) which at the time of determination has not been developed for commercial or residential purposes, or (c) capital stock or other equity interests of a Subsidiary which owns as its principal asset, directly or indirectly, Undeveloped Land described in clause (a) or (b) of this definition.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“Unencumbered Agricultural Division Assets” means assets of the agricultural division of Holdings and its Subsidiaries which: (i) are not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, and (b) Liens incidental to the conduct of the owner of such asset’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable asset, or

materially impair the use thereof; (ii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such asset, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or equity interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such asset, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or equity interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or equity interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such asset owned by a Subsidiary of Holdings shall be deemed to be an Unencumbered Agricultural Division Asset unless (1) both such asset and all equity interests of the Subsidiary which holds legal title to such asset is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in Section 8.01(f) or 8.01(g) (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“Unencumbered Agricultural Land” means Agricultural Land which: (i) is not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, and (b) Liens incidental to the conduct of the owner of such property’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof; (ii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or equity interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or equity interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or equity interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such land owned by a Subsidiary of Holdings shall be deemed to be Unencumbered Agricultural Land unless (1) both such land and all equity interests of the Subsidiary which holds legal title to such land is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in Section 8.01(f) or 8.01(g) (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“Unencumbered EBITDA” means, for any period, with respect to Holdings and its Subsidiaries on a consolidated basis, without duplication, EBITDA derived from (i) Unencumbered Investment Properties, (ii) Unencumbered Leased Agricultural Land, and (iii) EBITDA generated from the agricultural division of Holdings and its Subsidiaries but only to the extent the assets in the agricultural division are Unencumbered Agricultural Division Assets.

“Unencumbered Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) Unencumbered EBITDA for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date to (b) Unencumbered Fixed Charges as of such date.

“Unencumbered Fixed Charges” means, as of any period of determination, with respect to Holdings and its Subsidiaries on a consolidated basis, the portion of Consolidated Interest Expense attributable to Unsecured Debt for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date, plus preferred dividends of Holdings with respect to Unsecured Debt accrued during the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date, plus scheduled principal payments with respect to Unsecured Debt (excluding any “balloon payment” and amounts outstanding under this Agreement that are classified as current liabilities under GAAP but only to the extent that no Default or Event of Default then exists under this Agreement or the Note Purchase Agreement) of Holdings and its Subsidiaries for the period of four consecutive fiscal quarters next succeeding such date of determination.

“Unencumbered Income Producing Assets Value” means, at any time of determination thereof, without duplication, the sum of (i) the Net Operating Income from Unencumbered Investment Properties divided by the Applicable Cap Rates, (ii) the Net Operating Income from Unencumbered Leased Agricultural Land divided by the Applicable Cap Rates, (iii) the Net Operating Income from Unencumbered Leased Non-Agricultural Land divided by the Applicable Cap Rate and (iv) the greater of (x) EBITDA for the period of four (4) consecutive fiscal quarters most recently ended generated from the agricultural division of Holdings and its Subsidiaries but only to the extent the assets in the agricultural division are Unencumbered Agricultural Division Assets (excluding, as an abundance of caution, Net Operating Income from Leased Agricultural Land) divided by 20.0%, and (y) the Appraised Value of Unencumbered Agricultural Land which is not leased to third parties (provided that the determination of whether or not to obtain the appraisal necessary to determine the Appraised Value shall be made at the option of the Borrower and if the Borrower does not elect to have an appraisal performed, then clause (x) will be deemed to be greater than clause (y)).

“Unencumbered Income Producing Assets Value to Unsecured Debt Ratio” means, as at any time of determination thereof, the ratio of (i) Unencumbered Income Producing Assets Value to (ii) Unsecured Debt as of such time.

“Unencumbered Investment Properties” means Investment Properties which (i) are not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, and (b) Liens incidental to the conduct of the owner of such property’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof; (ii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such project, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or equity interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such project, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or equity interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or equity interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such Investment Property owned by a Subsidiary of Holdings shall be deemed to be an Unencumbered Investment Property unless (1) both such project and all equity interests of the Subsidiary which holds legal title to such project is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed



money, and (3) no event has occurred or condition exists described in Section 8.01(f) or 8.01(g) (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“Unencumbered Leased Agricultural Land” means Agricultural Land which is leased to third parties on arms’-length terms and which: (i) is not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (b) Liens incidental to the conduct of the owner of such property’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof, and (c) arms’-length operating leases with third-party lessees; (ii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or equity interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or equity interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or equity interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such land owned by a Subsidiary of Holdings shall be deemed to be Unencumbered Leased Agricultural Land unless (1) both such land and all equity interests of the Subsidiary which holds legal title to such land is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in Section 8.01(f) or 8.01(g) (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“Unencumbered Leased Non-Agricultural Land” means Leased Non-Agricultural Land which: (i) is not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (b) Liens incidental to the conduct of the owner of such property’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof, and (c) arms’-length operating leases with third-party lessees; (ii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or equity interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or equity interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or equity interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such land owned by a Subsidiary of Holdings shall be deemed to be Unencumbered Leased Non-Agricultural Land unless (1) both such land and all equity interests of the Subsidiary which holds legal title to such land is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in Section 8.01(f) or 8.01(g) (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unsecured Debt” means, at any time of determination thereof, the consolidated Debt of Holdings or its Subsidiaries not secured by any Lien.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(III).

“Voting Stock” means any shares of stock (or comparable equity securities) whose holders are entitled under ordinary circumstances to vote for the election of directors (or comparable persons), irrespective of whether at the time stock (or comparable equity securities) of any other class or classes shall have or might have voting power by reason of the happening of any contingency.

“Withholding Agent” means the Borrower, any Loan Party and the Agent.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any articles of incorporation, bylaws or similar organizational documents) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) All covenants hereunder shall be given independent effect so that if a particular action or condition is prohibited by any one of such covenants, the fact that it would be permitted by an exception to, or otherwise be in compliance within the limitations of, another covenant shall not (i) avoid the occurrence of a Default if such action is taken or such condition exists or (ii) in any way prejudice an attempt by the Agent to prohibit, through equitable action or otherwise the taking of any action by the Borrower or any Subsidiary that would result in a Default. For the avoidance of doubt, if a particular action or condition is expressly permitted by an exception to a covenant and is not expressly prohibited by another provision in the same covenant, the taking of such action or the existence of such condition shall not result in a Default under such covenant.

(e) For purposes of all calculations made under the financial covenants set forth in Section 7.01 and the Priority Debt covenant set forth in Section 7.05 for an applicable period, (i) if during such period Holdings, the Borrower or any Subsidiary shall have consummated an acquisition of a Significant Subsidiary or a Significant Line of Business, (x) EBITDA for such period shall be calculated after giving pro forma effect thereto as if such transaction occurred on the first day of such period; provided, that if the aggregate purchase price for any such acquisition is greater than or equal to \$25,000,000, EBITDA shall only be calculated on a pro forma basis to the extent such pro forma calculations are based on audited financial statements or other financial statements reasonably satisfactory to the Required Lenders and (y) any Debt incurred or assumed by any Loan Party or Subsidiary (including the Person or property acquired) in connection with such transaction and any Debt of the Person or property acquired which is not retired in connection with such transaction (1) shall be deemed to have been incurred as of the last day of the previous period and (2) if such Debt has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Debt as at the relevant date of determination, (ii) if during such period Holdings, the Borrower or any Subsidiary shall have consummated a disposition of all or substantially all of the assets of Holdings, the Borrower or a Subsidiary or of a majority of the equity interests of a Subsidiary or of a Significant Line of Business, (x) EBITDA for such period shall be calculated after giving pro forma effect thereto as if such transaction occurred on the last day of the previous period and (y) any Debt which is retired in connection with such transaction shall be excluded and deemed to have been retired as of the last day of the previous period, and (iii) if the calculation for any period includes a period prior to the consummation of the Restructuring Transactions, (x) EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Restructuring Transaction occurred on the first day of such period and (y) any Debt which is retired in connection with such Restructuring Transaction shall be excluded and deemed to have been retired as of the last day of the previous period, so long as, in each case for clauses (i), (ii) and (iii) above, such pro forma calculations are (I) made in accordance with Regulation S-X or (II) are otherwise acceptable to the Required Lenders.

### **1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, (A) until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) until so amended, the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested by the Agent hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

**1.04 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.05 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

**1.06 Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**1.07 Inclusion of Holdings.** For the avoidance of doubt, prior to the consummation of the Restructuring Transactions, the references to Holdings in Articles VI, VII and VIII and the applicable definitions set forth in Section 1.01 related thereto shall be deemed to be references to the Borrower.

## **ARTICLE II.**

### **THE COMMITMENTS AND CREDIT EXTENSIONS**

**2.01 Committed Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “Committed Loan”) to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time

outstanding the amount of such Lender's Commitment; provided, however, that after giving effect to any Committed Borrowing, (i) the Total Outstandings shall not exceed the Aggregate Commitments, and (ii) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed the amount of such Lender's Commitment. Subject to the terms and conditions hereof, the Borrower may borrow Committed Loans under this Section 2.01, repay or prepay under Section 2.05 such Committed Loans, reborrow such Committed Loans and borrow other Committed Loans under this Section 2.01. Committed Loans may be Base Rate Loans or Eurodollar Loans, as further provided herein.

## **2.02 Borrowings, Conversions and Continuations of Committed Loans.**

(a) Each Committed Borrowing, each conversion of Committed Loans from one Type to the other, and each continuation of Eurodollar Loans shall be made upon the Borrower's irrevocable notice to the Agent, which may be given by telephone. Each such notice must be received by the Agent not later than 12:00 p.m. (i) three Business Days prior to the requested date of any Borrowing of Eurodollar Loans, of any conversion to or continuation of Eurodollar Loans or of any conversion of Eurodollar Loans to Base Rate Loans and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Agent of a written Committed Loan Notice, appropriately completed and signed by an Authorized Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Committed Borrowing, a conversion of Committed Loans from one Type to the other, or a continuation of Eurodollar Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Committed Loans to be borrowed, converted or continued, (iv) the Type of Committed Loans to be borrowed or to which existing Committed Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Committed Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation of a Eurodollar Loan, then the applicable Committed Loan shall be made as, or converted to, Base Rate Loans, unless such Committed Loan was a Eurodollar Loan, in which case such Committed Loan shall be continued as a Eurodollar Loan with an Interest Period of one month. Any such automatic conversion to a Base Rate Loan and any such continuation of a Eurodollar Loan, in either case, shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Loans in any such Committed Loan Notice, but the Borrower fails to specify an Interest Period for such Committed Loan or continuation of a Eurodollar Loan, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Eurodollar Loans described in the preceding subsection. In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Loan available to the Agent in immediately available funds at the Agent's Office not later than 11:00 a.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Sections 4.01 and 4.03), the Agent shall make all funds so received available to the Borrower in like funds as received by the Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Borrower; provided, however, that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Loans without the consent of the Required Lenders.

(d) The Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Committed Borrowings, all conversions of Committed Loans from one Type to the other, and all continuations of Committed Loans as the same Type, there shall not be more than ten Interest Periods in effect at any single time with respect to Eurodollar Loans.

## **2.03 Letters of Credit.**

### **(a) The Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Initial Funding Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrower or any of its Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings shall not exceed the Aggregate Commitments, (y) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of

Credit shall be deemed to have been issued pursuant hereto, and from and after the Initial Funding Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date; provided that Letters of Credit with an expiry date after the Letter of Credit Expiration Date may be issued (but the L/C Issuer shall have no obligation to issue) so long as the Borrower Cash Collateralizes such Letter of Credit in accordance with the terms of this Agreement pursuant to this clause (B). The Borrower hereby agrees that on or before the Letter of Credit Expiration Date it shall Cash Collateralize any Letter of Credit existing and not expiring on the Letter of Credit Expiration Date in an amount equal to at least 100% of the face amount of such Letter of Credit (and in the event the Borrower fails to do so, the Agent may require each Lender to fund its participation interest in an amount equal to such Lender's Applicable Percentage of the outstanding Letters of Credit for purposes of Cash Collateralizing the Letters of Credit). For the avoidance of doubt, the parties hereto agree that the obligations of the Lenders hereunder to reimburse the L/C Issuer for any Unreimbursed Amount with respect to any Letter of Credit shall terminate on the Maturity Date with respect to drawings occurring after that date.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) such Letter of Credit is to be denominated in a currency other than Dollars;

or

(D) any Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Agent) in the form of a Letter of Credit Application, appropriately completed and signed by an Authorized Officer of the Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Agent not later than 11:00 a.m. at least three Business Days (or such later date and time as the Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the stated amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and

detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the L/C Issuer and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Agent (by telephone or in writing) that the Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Lender, the Agent or the Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or the applicable Subsidiary or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Agent that the Required Lenders have elected not to permit such extension or (2) from the Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an "Auto-Reinstatement Letter of Credit"). Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the "Non-Reinstatement Deadline"), the L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Reinstatement Deadline (A) from the Agent that the Required Lenders have elected not to permit such reinstatement or (B) from the Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the L/C Issuer not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Agent a true and complete copy of such Letter of Credit or amendment and any other Issuer Documents related thereto.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Borrower and the Agent thereof. Not later than 11:00 a.m. on the Business Day following the Honor Date (each such date of notice, a "Notice Date"), the Borrower shall reimburse the L/C Issuer through the Agent in an amount equal to the amount of such drawing (together with any interest thereon for such period from the Honor Date to the date such reimbursement is made). If the Borrower fails to so reimburse the L/C Issuer by such time, the Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing including any applicable interest thereon (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. In such event, and in lieu of the obligation of the Borrower to reimburse the L/C Issuer as provided in the two immediately preceding sentences the Borrower shall be deemed to have requested a Committed Borrowing of Base Rate Loans to be disbursed on the Notice Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Agent's Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Committed Loan or its L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender's obligation to make Committed Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Committed Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations by the Lenders.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Agent), the Agent will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Agent.

(ii) If any payment received by the Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subsidiary.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (viii) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary. The L/C Issuer shall provide to the Agent a list of outstanding Letters of Credit (together with type, amounts and denominated currency) issued by it on a monthly basis.

(g) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(h) Applicability of ISP and UCP. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer required under any law or practice that is required to be applied to any Letter of Credit, including the law of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) Letter of Credit Fees. The Borrower shall pay to the Agent for the account of each Lender in accordance, subject to Section 2.16, with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand, (ii) computed on a quarterly basis in arrears and (iii) computed for the actual number of days that such Letters of Credit are outstanding during the applicable quarter. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.

(i) With respect to any Letter of Credit issued by Bank of America, N.A., in its capacity as L/C Issuer, the Borrower shall pay directly to Bank of America, N.A. in such capacity for its own account a fronting fee, (A) with respect to each commercial Letter of Credit, at a rate specified in the Fee Letter, computed on the amount of such Letter of Credit, and payable upon the issuance thereof, (B) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a

rate separately agreed between the Borrower and Bank of America, N.A., in its capacity as L/C Issuer, computed on the amount of such increase, and payable upon the effectiveness of such amendment, and (C) with respect to each standby Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, the Borrower shall pay directly to the Bank of America, N.A., in its capacity as L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of Bank of America, N.A., in its capacity as L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(ii) With respect to any Letter of Credit issued by an L/C Issuer other than Bank of America, N.A., the Borrower shall pay directly to such L/C Issuer for its own account a fronting fee with respect to each issuance or amendment of a Letter of Credit, at a rate and at the times separately agreed between the Borrower and such L/C Issuer. In addition, the Borrower shall pay directly to such L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(iii) For the purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

## 2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender agrees, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, to make loans (each such loan, a “Swing Line Loan”) to the Borrower from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit; provided, however, that (i) after giving effect to any Swing Line Loan, (A) the Total Outstandings shall not exceed the Aggregate Commitments, and (B) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender’s Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender’s Commitment, (ii) that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan and (iii) the Swing Line Lender shall not be under any obligation to make any Swing Line Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Prior to a refinancing of a Swing Line Loan or the funding of a risk participation in Swing Line Loans, in either case, pursuant to Section 2.04(c), it is understood and agreed that the outstanding Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Committed Loans and L/C Obligations of the Swing Line Lender, may exceed the amount of such Lender’s Commitment. Subject to the other terms and conditions hereof, the Borrower may borrow Swing Line Loans under this Section 2.04, repay or prepay such Swing Line Loans, reborrow such Swing Line Loans and borrow other Swing Line Loans under this Section 2.04. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender’s Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower’s irrevocable notice to the Swing Line Lender and the Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Agent of a written Swing Line Loan Notice, appropriately completed and signed by an Authorized Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Agent (by telephone or in writing) that the Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Base Rate Loan in an amount equal to such Lender’s Applicable Percentage of the amount of Swing Line Loans then outstanding (which Base Rate Loans shall be used to refinance such Swing Line Loans). Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to the Agent in immediately available funds (and the Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Agent’s Office not later than 10:00 a.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Agent shall remit the funds so received to the Swing Line Lender. To the extent that a Swing Line Loan has been refinanced with a Borrowing of Base Rate Loans pursuant to this Section 2.04(c)(i), such Swing Line Loan shall be deemed repaid for all purposes herein.



(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Committed Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Committed Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Committed Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

## 2.05 Prepayments.

(a) The Borrower may, upon notice to the Agent, at any time or from time to time voluntarily prepay Committed Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of Eurodollar Loans and (B) one Business Day prior to any date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Committed Loans to be prepaid and, if Eurodollar Loans are to be prepaid, the Interest Period(s) of such Loans. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If the Borrower gives a prepayment notice, then the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, any notice of prepayment given in connection with a notice of termination of the Commitments given by the Borrower may state that such prepayment notice is conditioned upon the effectiveness of other credit facilities or capital raising, in which case such notice may (subject to compliance by the Borrower with the requirements of Section 3.05) be revoked by the Borrower (by notice to the Agent on or prior to the specified effective date) if such condition is not satisfied. Any prepayment of a Eurodollar Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Any prepayment of a Eurodollar Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.16, each such prepayment shall be applied to the Committed Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Outstandings at any time exceed the Aggregate Commitments, the Borrower shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Loans the Total Outstandings exceed the Aggregate Commitments then in effect.

## **2.06 Termination or Reduction of Commitments.**

(a) The Borrower may, upon notice to the Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments and (iv) if, after giving effect to any reduction of the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Commitments, such Sublimit shall be automatically reduced by the amount of such excess; provided, any notice of termination of the Aggregate Commitments given by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or capital raising, in which case such notice may be revoked by the Borrower (by notice to the Agent on or prior to the specified effective date) if such condition is not satisfied. The Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

(b) If the Initial Funding Date has not occurred on or prior to the date that is ninety (90) days following the Closing Date, the Aggregate Commitments shall be automatically terminated on the ninety-first (91<sup>st</sup>) day following the Closing Date.

## **2.07 Repayment of Loans.**

(a) The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of Committed Loans outstanding on such date.

(b) Except to the extent previously refinanced with a Base Rate Loan pursuant to Section 2.04(c), the Borrower shall repay each Swing Line Loan on the earlier to occur of (i) the date ten Business Days after such Loan is made and (ii) the Maturity Date.

## **2.08 Interest.**

(a) Subject to the provisions of subsection (b) below, (i) each Eurodollar Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate equal to the Eurodollar Rate plus the Applicable Rate plus 0.60%.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such overdue amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in clauses (b)(i) and (b)(ii) above), the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

## **2.09 Fees.** In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(a) Commitment Fee. The Borrower shall pay to the Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Aggregate Commitments exceed the sum of (i) the Outstanding Amount of Committed Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.16. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted towards or considered usage of the Aggregate Commitments for purposes of determining the commitment fee. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees. The Borrower shall pay to the Arranger and the Agent for their own accounts fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

## **2.10 Computation of Interest and Fees; Retroactive Adjustment of Applicable Rate.**

(a) All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Total Debt to Total Adjusted Asset Value Ratio as calculated by the Borrower as of any applicable date while this Agreement is in effect was inaccurate and (ii) a proper calculation of the Total Debt to Total Adjusted Asset Value Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(i) or 2.08(b) or under Article VIII. The Borrower's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder until the date that is one year after such termination and repayment. Upon payment by the Borrower of any shortfall as provided in this clause (b), any Default or Event of Default resulting solely from the failure to pay such amounts when the interest or fees for the relevant period were due and payable or any representations and warranties made in this regard shall be deemed cured for all purposes.

## **2.11 Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Agent in the ordinary course of business. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrower shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and the Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error.

## **2.12 Payments Generally; Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 11:00 a.m. on the date specified herein. The Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 11:00 a.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to the proposed date of any Committed Borrowing of Eurodollar Loans (or, in the case of any Committed Borrowing of Base Rate Loans, prior to 9:00 a.m. on the date of such Committed Borrowing) that such Lender will not make available to the Agent such Lender's share of such Committed Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Committed Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Agent, then the applicable Lender and the Borrower severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Committed Borrowing to the Agent, then the amount so paid shall constitute such Lender's Committed Loan included in such Committed Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Agent.

(ii) Payments by Borrower; Presumptions by Agent. Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not

make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice of the Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

**2.13 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Committed Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Committed Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.15, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

#### **2.14 Increase in Commitments.**

(a) Request for Increase. Provided there exists no Default, upon notice to the Agent (which shall promptly notify the Lenders), the Borrower may from time to time, after the Initial Funding Date, but no more than one time in any calendar year, request an increase in the Aggregate Commitments by an amount (for all such requests) not exceeding \$90,000,000; provided that any such request for an increase shall be in a minimum amount of \$10,000,000. At the time of sending such notice, the Borrower (in consultation with the Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(b) Lender Elections to Increase. Each Lender shall notify the Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) Notification by Agent; Additional Lenders. The Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Agent, the L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to the Agent and its counsel.

(d) Effective Date and Allocations. If the Aggregate Commitments are increased in accordance with this Section, the Agent and the Borrower shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Borrower shall deliver to the Agent a certificate dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer (i) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such increase, and (ii) certifying that, before and after giving effect to such

increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.14, the representations and warranties contained in subsections (a) and (b) of Section 5.02 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (B) no Default exists. The Borrower shall prepay any Committed Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Committed Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this Section.

(f) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

## 2.15 Cash Collateral.

(a) Certain Credit Support Events. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrower shall be required to provide Cash Collateral pursuant to Section 8.02(c), or (iv) there shall exist a Defaulting Lender, the Borrower shall immediately (in the case of clause (iii) above) or within one Business Day (in all other cases) following any request by the Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender). For purposes of clarification, if Fronting Exposure remains after giving effect to Section 2.16(a)(iv), the Agent shall first request that the Defaulting Lender deliver to the Agent Cash Collateral in an amount sufficient to cover the remaining Fronting Exposure and, second, to the extent Fronting Exposure remains after giving effect to Cash Collateral provided by the Defaulting Lender, the Agent shall request that the Borrower deliver to the Agent Cash Collateral in an amount sufficient to cover the remaining Fronting Exposure. Such Cash Collateralization may be effected by means of a Borrowing of Committed Loans or a funding of participation interests (assuming for such purposes that the Letters of Credit that will survive the Maturity Date had been fully drawn on the Letter of Credit Expiration Date).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Agent, for the benefit of the Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the relevant Defaulting Lender and, to the extent Fronting Exposure remains thereafter, the Borrower will promptly upon demand by the Agent, pay or provide to the Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. The relevant Defaulting Lender or, to the extent not paid by the relevant Defaulting Lender, the Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.04, 2.05, 2.16 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vi))) or (ii) the Agent's and the L/C Issuer's good faith determination that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of the Borrower shall not be released during the continuance of a Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the L/C Issuer, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations. Between a Defaulting Lender and the Borrower as to any particular Cash Collateral, the Cash Collateral furnished by the Borrower shall be released prior to any Cash Collateral furnished by the Defaulting Lender.

## 2.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and in Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.15; *fourth*, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; *fifth*, if so determined by the Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.15; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction

obtained by any Lender, the L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.15.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause any Non-Defaulting Lender's share of the Total Outstandings to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.15.

(b) Defaulting Lender Cure. If the Borrower, the Agent, the Swing Line Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Committed Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Committed Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) Notification of Defaulting Lender. Upon becoming aware that a Lender is a Defaulting Lender, the Agent shall reasonably promptly notify the Borrower that such Lender is a Defaulting Lender.

### ARTICLE III.

#### TAXES, YIELD PROTECTION AND ILLEGALITY

##### 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable laws. If any applicable laws (as determined in the good faith discretion of the applicable Withholding Agent) require the deduction or withholding of any Tax from any such payment

by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Withholding Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Withholding Agent shall withhold or make such deductions as are determined by the Withholding Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Withholding Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction for Indemnified Taxes been made. The Borrower shall provide the Agent with at least ten days prior written notice prior to the date that any Loan Party makes any deduction or payment for Taxes in accordance with this subsection (ii).

(iii) If any Withholding Agent shall be required by any applicable laws other than the Code to withhold or deduct any Taxes from any payment, then (A) the Withholding Agent, as required by such laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Withholding Agent, to the extent required by such laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction for Indemnified Taxes been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes

(c) Tax Indemnification.

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto (except for any such penalties, interest and reasonable expenses to the extent attributable to the gross negligence or willful misconduct of such Recipient), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the L/C Issuer (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. Each of the Loan Parties shall, and does hereby, jointly and severally indemnify the Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after written demand therefor, (x) the Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Borrower or the Agent, as the case may be, after any payment of Taxes by the Borrower or by the Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Agent or the Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit D-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN; or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-2 or Exhibit D-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the Closing Date.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so.

(iv) For the purposes of this Section 3.01(e), the term Lender includes any L/C Issuer.

(f) Treatment of Certain Refunds. Unless required by applicable laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient determines in good faith that it has received a refund of any Taxes (including any application thereof to another amount owed to the refunding Governmental Authority) as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.



(g) **Survival.** Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

**3.02 Illegality.** If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Committed Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Agent, (i) any obligation of such Lender to make or continue Eurodollar Loans or to convert Base Rate Loans to Eurodollar Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender, shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Eurodollar Rate component of the Base Rate), either (i) if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, on the last day of the Interest Period therefor, or (ii) if such Lender may not lawfully continue to maintain such Eurodollar Loans to the last day of the Interest Period therefor, on the last day that such Lender may lawfully continue to maintain such Eurodollar Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

**3.03 Inability to Determine Rates.** If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans of the type covered by the Agent's notice shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Loans or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein.

#### **3.04 Increased Costs.**

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Committed Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than three months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) **Delay in Requests. Reserves on Eurodollar Loans.** The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 Business Days' prior notice (with a copy to the Agent) of such additional interest from such Lender. If a Lender fails to give notice Business Days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 Business Days from receipt of such notice.

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

- (a) any continuation, conversion, payment or prepayment of any Eurodollar Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);
- (b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow or continue a Eurodollar Loan or to convert any Base Rate Loan to a Eurodollar Loan on the date or in the amount notified by the Borrower; or
- (c) any assignment of a Eurodollar Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained (but excluding any loss of anticipated profits). The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be, (as compared to actions taken by such Lender with respect to other similarly situated borrowers). The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival.** All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Agent.

## **ARTICLE IV.**

### **CONDITIONS PRECEDENT TO EFFECTIVENESS AND CREDIT EXTENSIONS**

**4.01 Conditions of Effectiveness.** This Agreement shall become effective upon satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the Borrower, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Agent and each of the Lenders:

- (i) executed counterparts of this Agreement;
- (ii) such certificates of resolutions or other action, incumbency certificates (including specimen signatures) and/or other certificates of the secretary or assistant secretary of each Loan Party as the Agent may require evidencing the identity, authority

and capacity of each Authorized Officer thereof authorized to act as an Authorized Officer in connection with this Agreement and the other Loan Documents; which may in the case of the unanimous written consent of the board of directors of the Borrower delivered on the Closing Date include email acknowledgements by certain board members of such consent in lieu of an executed counterparts thereto;

(iii) such documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing and in good standing in its jurisdiction of organization;

(iv) a favorable opinion of (I) Skadden, Arps, Slate, Meagher & Flom LLP, as legal counsel to the Loan Parties and (II) General Counsel to the Loan Parties addressed to the Agent and each Lender, as to such customary matters concerning the Borrower and the Loan Documents as the Agent may reasonably request;

(v) a certificate of a Responsible Officer of the Borrower either (A) attaching copies of all documents evidencing other necessary actions, approval or consents with respect to the Loan Documents or (B) stating that no such actions, approvals or consents are so required; and

(vi) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, provided that for the purposes of this clause (vi), any references to Credit Extensions in such Sections shall be disregarded and (B) that there has been no event or circumstance since December 31, 2011 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) Any fees required to be paid under the Fee Letter to the Agent, Arranger or the Lenders on or before the Closing Date shall have been paid.

(c) The Agent shall have received a copy, certified by a Responsible Officer of the Borrower as true and complete, of an amendment to the Note Purchase Agreement (which shall be in an aggregate principal amount of at least \$175,000,000), in form and substance reasonably satisfactory to the Agent.

(d) Unless waived by the Agent, the Borrower shall have paid all fees, reasonable and documented out-of-pocket expenses, charges and disbursements of Moore & Van Allen PLLC, as counsel to the Agent (directly to such counsel if requested by the Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Closing Date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Agent).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02 Conditions to all Credit Extensions.** The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type, or a continuation of Eurodollar Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect which such representation and warranty shall be true and correct in all respects) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.02 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type or a continuation of Eurodollar Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

**4.03 Conditions to Initial Credit Extensions.** The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the Borrower or Holdings, each dated the Initial Funding Date (or, in the case of certificates of governmental officials, a recent date before the Initial Funding Date) and each in form and substance satisfactory to the Agent and each of the Lenders:

(i) an executed counterpart of the Guaranty;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note at least two Business Days prior to the Initial Funding Date;

(iii) to the extent reasonably requested by the Agent, such certificates of resolutions or other action, incumbency certificates (including specimen signatures) and/or other certificates of the secretary or assistant secretary of each Loan Party as the Agent may require evidencing the identity, authority and capacity of each Authorized Officer thereof authorized to act as an Authorized Officer in connection with the execution of the Guaranty or a Note;

(iv) a fully executed copy of the unanimous written consent of the board of directors of the Borrower provided to the Agent on the Closing Date;

(v) to the extent reasonably requested by the Agent, such documents and certifications to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing and in good standing in its jurisdiction of organization;

(vi) a favorable opinion of (I) Skadden, Arps, Slate, Meagher & Flom LLP, as legal counsel to the Loan Parties and (II) General Counsel to the Loan Parties addressed to the Agent and each Lender, with respect to Holdings, the Guaranty and any other customary matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request;

(vii) a certificate of a Responsible Officer of the Borrower either (A) attaching copies of all documents evidencing other necessary actions, approval or consents with respect to the Loan Documents and the Restructuring Transaction or (B) stating that no such actions, approvals or consents are so required; and

(vii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and 4.02(b) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2011 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) The Existing Credit Agreement shall have been repaid in full and all commitments thereunder shall have been or concurrently with the Initial Funding Date is terminated.

(c) The Matson Credit Agreement shall have been (i) repaid in full and all commitments thereunder shall have been terminated and (ii) refinanced with a new revolving credit facility.

(d) The Agent and the Lenders shall be reasonably satisfied with the final and executed Separation Agreement; provided that the copy of the Separation Agreement filed with the SEC on May 30, 2012 shall be deemed to be satisfactory to the Agent and the Lenders, together with any changes thereto that are not materially adverse to the interests of the Agent and the Lenders taken as a whole. The Agent shall have received a copy, certified by a Responsible Officer of the Borrower as true and complete, of the Separation Agreement as originally executed and delivered, together with any amendments or supplements thereto and all other agreements entered into in connection therewith.

(e) The Agent shall have received satisfactory evidence that each of the events set forth in the definition of Restructuring Transaction have occurred (in accordance with the material terms as publicly disclosed by the Borrower or disclosed to the Agent, in each case, on or prior to May 4, 2012).

(f) The Agent shall have received satisfactory evidence that (i) the Note Purchase Agreement delivered to the Agent pursuant to Section 4.01(c) is in full force and effect and has not been modified, supplemented or amended since the Closing Date except for such modifications, supplements or amendments agreed to by the Agent and which are not materially adverse to the Lenders and (ii) that the Initial Closing Day (as defined in the Note Purchase Agreement) has occurred (or will occur concurrently with the Initial Funding Date).

(g) Unless waived by the Agent, the Borrower shall have paid all fees, reasonable and documented out-of-pocket expenses, charges and disbursements of Moore & Van Allen PLLC, as counsel to the Agent (directly to such counsel if requested by the Agent) to the extent invoiced prior to or on the Initial Funding Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Agent).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.03, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Initial Funding Date specifying its objection thereto.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Agent and the Lenders that:

**5.01 Organization.** Each Loan Party is duly organized, validly existing and in good standing under the laws of the state of its organization. Each Significant Subsidiary is duly organized, validly existing and in good standing under the laws of the state of its organization, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party and each Significant Subsidiary has the full power and authority to own its properties and to carry on its business as now being conducted, and is duly qualified in every state where the nature of its business requires that it do so, and is in good standing under the laws of every jurisdiction outside the state of its organization in which it owns or leases property or conducts business and in which the failure to so qualify would have a Material Adverse Effect. Each Loan Party and each Significant Subsidiary has complied in all material respects with (or is exempt from the application of) all material federal, state and local laws, regulations and orders that are, or in the absence of any exemption could be, applicable to the operations of its business, including public utility, bank holding company, state agricultural and Environmental and Safety Laws, in each case except to the extent that the failure to so comply could not reasonably be expected to have a Material Adverse Effect. Each Loan Party has full power, authority and right to execute and deliver, and to perform and observe, the provisions of this Agreement and the other Loan Documents

to which such Loan Party is a party and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance of the Loan Documents by each Loan Party have been authorized by all necessary corporate and other action, and, when duly executed and delivered, will be the legal, valid and binding obligations of such Loan Party, enforceable against it in accordance with their respective terms.

## **5.02 Financial Statements.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Debt.

(b) The unaudited combined balance sheet of the Borrower and its Subsidiaries dated March 31, 2012, and the related combined statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

**5.03 Actions Pending.** There is no action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened against any Loan Party or any Subsidiary or any properties or rights of any Loan Party or any Subsidiary, by or before any court, arbitrator or administrative or governmental body which could reasonably be expected to result in a Material Adverse Effect.

**5.04 Outstanding Debt.** No Loan Party nor any Subsidiary has any Debt outstanding except as permitted by this Agreement. There exists no event of default under the provisions of any instrument evidencing any such Debt or of any agreement relating thereto.

**5.05 Title to Properties.** Each Loan Party and each Significant Subsidiary has such title to its properties and assets as is appropriate and sufficient for the conduct of the business which such Loan Party or Significant Subsidiary presently undertakes or contemplates undertaking, except where failure to comply could not reasonably be expected to result in a Material Adverse Effect. There are no Liens on such properties and assets that (a) materially restrict any Loan Party's or Significant Subsidiary's intended use and enjoyment thereof in the ordinary course of business or (b) are not permitted by Section 7.02. There is no default, nor any event that, with notice or lapse of time or both, would constitute such a default under any lease to which any Loan Party or any such Significant Subsidiary is a lessee, lessor, sublessee or sublessor, except to the extent any of the foregoing defaults could not reasonably be expected to result in a Material Adverse Effect.

**5.06 Taxes.** Each Loan Party and each Significant Subsidiary has filed all Federal and state income and other material tax and informational returns which are required to be filed by it. Each Loan Party and each such Subsidiary has paid all material taxes as shown on its returns and on all assessments received to the extent that such taxes have become due, except such assessments as are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP. The Loan Parties and their Subsidiaries do not have any unpaid tax obligations which collectively could reasonably be expected to have a Material Adverse Effect.

**5.07 Conflicting Agreements and Other Matters.** Neither the execution nor delivery of this Agreement or the other Loan Documents, nor the making of Credit Extensions hereunder, nor fulfillment of nor compliance with the terms and provisions of this Agreement or the other Loan Documents will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any Lien upon any of the properties or assets of any Loan Party or any Subsidiary pursuant to, their respective articles of incorporation, bylaws or similar organizational documents, any award of any arbitrator or any agreement, instrument, order, judgment, decree, and, after due investigation and to the Borrower's best knowledge, any statute, law, rule or regulation to which any Loan Party or any Subsidiary is subject. No Loan Party nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing any of their respective Debt, any agreement relating thereto or any other contract or agreement which restricts or otherwise limits the incurring of Debt pursuant hereto, except as set forth on Schedule 5.07 hereto.

**5.08 [Intentionally omitted].**

**5.09 ERISA.** No accumulated funding deficiency (as defined in section 302 of ERISA and section 412 of the Code), whether or not waived, exists with respect to any Plan (other than a Multiemployer Plan). No liability to the PBGC has been or is expected by the Borrower or any ERISA Affiliate to be incurred with respect to any Plan (other than a Multiemployer Plan) by the Borrower, any Subsidiary or any ERISA Affiliate which is or would be materially adverse to the business, condition (financial or otherwise) or operations of the Borrower and its Subsidiaries taken as a whole. Neither the Borrower, any of its Subsidiaries or any ERISA Affiliate has incurred or presently expects to incur any withdrawal liability under Title IV of ERISA with respect to any Multiemployer Plan which is or would be materially adverse to the Loan Parties and its Subsidiaries taken as a whole. The execution and delivery of this Agreement and the other Loan Documents and the Credit Extensions hereunder will be exempt from, or will not involve any transaction which is subject to the prohibitions of, section 406 of ERISA and will not involve any transaction in connection with which a penalty could be imposed under section 502(i) of ERISA or a tax could be imposed pursuant to section 4975 of the Code.

**5.10 Government Consent.** Neither the nature of any Loan Party nor any of its Subsidiaries, nor any of their respective businesses or properties, nor any relationship between any Loan Party or any Subsidiary and any other Person, nor any circumstance in connection with the Credit Extensions hereunder is such as to require any authorization, consent, approval, exemption or other action by, notice to or filing with any court, administrative or governmental body (other than routine filings after the date of closing with the SEC and/or state blue sky authorities) in connection with (a) the execution and delivery of this Agreement and the other Loan Documents or (b) fulfillment of or compliance with the terms and provisions of this Agreement and the other Loan Documents.

**5.11 Investment Company Status, Etc.** (a) Neither the Borrower nor Holdings is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, or an "investment adviser" within the meaning of the Investment

Advisers Act of 1940. (b) Neither the Borrower, Holdings nor any Subsidiary is a “bank holding company” within the meaning of the Federal Deposit Insurance Act (12 U.S.C. Section 1811, et. seq.).

**5.12 Real Property Matters.** Except as could not reasonably be expected to have a Material Adverse Effect: (a) each Loan Party and each Significant Subsidiary has, or is in the process of procuring, for the real property which it owns or uses, such authorizations, consents, approvals, licenses and permissions (collectively, “Consents”) that such Loan Party or such Significant Subsidiary believes or has been advised by counsel to be now necessary for it to own, hold, develop, use or operate such real property in its current or intended manner, all in material compliance with applicable laws and regulations, and (b) no Loan Party nor any Significant Subsidiary has received any notice that any such Consent is necessary which has not been obtained, or is in the process of being obtained, other than applications for the same that have been or will be timely filed and are being or will be diligently pursued with the appropriate governmental authorities and agencies.

**5.13 Possession of Franchises, Licenses, Etc.** Except as could not reasonably be expected to have a Material Adverse Effect: (a) Holdings, the Borrower and its Subsidiaries possess all franchises, certificates, licenses, development and other permits and other authorizations from governmental political subdivisions or regulatory authorities and all patents, trademarks, service marks, trade names, copyrights, licenses, easements, rights of way and other rights, free from burdensome restriction, that are necessary in the judgment of the Borrower in any material respect for the ownership, maintenance and operation of their business, properties and assets, (ii) no Loan Party nor any of its Subsidiaries is in violation of any such rights and (iii) no event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such rights, or which adversely affects the rights of any Loan Party or its Subsidiaries thereunder.

**5.14 Environmental and Safety Matters.** Each Loan Party and its Subsidiaries and all of their respective properties and facilities have complied at all times and in all respects with all Environmental and Safety Laws except where failure to comply could not result in a Material Adverse Effect.

**5.15 Hostile Tender Offers.** None of the proceeds of the Credit Extensions will be used to finance any offer to purchase, or any purchase of, shares of capital stock of any corporation or equity interests in any other entity, or securities convertible into or representing the beneficial ownership of, or rights to acquire, any such shares or equity interests, if such shares, equity interests, securities or rights are of a class which is publicly traded on any securities exchange or in any over-the-counter market, other than purchases for portfolio investment purposes of such shares, equity interests, securities or rights which, together with any shares, equity interests, securities or rights then owned, represent less than 5% of the equity interests or beneficial ownership of such corporation or other entity, and such offer or purchase has not been duly approved by the board of directors of such corporation or the equivalent governing body of such other entity.

**5.16 Employee Relations.** No Loan Party nor any Subsidiary is the subject of (a) any material strike, work slowdown or stoppage, union organizing drive or other similar activity or (b) any material action, suit, investigation or other proceeding involving alleged employment discrimination, unfair termination, employee safety or similar matters, that in either case would reasonably be expected to have a Material Adverse Effect nor, to the best knowledge of the Borrower, is any such event imminent or likely to occur.

**5.17 OFAC.** No Loan Party, Subsidiary nor, to the knowledge of any Loan Party, any Related Party, (a) is currently the subject of any Sanctions, (b) is located, organized or residing in any Designated Jurisdiction or (c) is or has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. No Loan, nor the proceeds from any Loan, has been used, directly or indirectly, to lend, contribute, provide or has otherwise been made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including any Lender, the Arranger, the Agent, the L/C Issuer or the Swing Line Lender) of Sanctions.

**5.18 Disclosure.** Neither this Agreement nor any other document, certificate or statement furnished to the Agent or any Lender by or on behalf of the Borrower in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading. There is no fact peculiar to any Loan Party or any Subsidiary which materially adversely affects, or in the future may (so far as the Borrower can now foresee) materially adversely affect, the consolidated business, property, assets, prospects or financial condition of any Loan Party and the Subsidiaries and which has not been set forth in this Agreement or in the other documents, certificates and statements furnished to the Agent and each Lender by or on behalf of the Borrower prior to the date this representation is made or confirmed in connection with the transactions contemplated hereby; provided, that with respect to projections and other pro forma financial information included in such information, the Borrower only represents that such information was based upon good faith estimates and assumptions believed by the preparer thereof to be reasonable at the time made, it being recognized by the Agent and the Lenders that such financial information as it relates to future events is not to be viewed as a fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

## ARTICLE VI.

### AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than any contingent indemnification Obligation) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding:

**6.01 Financial Information.** The Borrower shall deliver to the Agent and each Lender:

(a) as soon as practicable and in any event within 60 days after the end of each quarterly period (other than the last quarterly period) in each fiscal year (or if earlier, 10 Business Days after the date required to be filed with the SEC), or the date on which another creditor of the Borrower first receives such information, consolidated statements of income and cash flows of Holdings and its Subsidiaries for the period from the beginning of the current fiscal year to the end of such quarterly period, and a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such quarterly period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year, all in reasonable detail and certified by an authorized financial officer of the Borrower, subject only to changes resulting from year-end adjustments;

(b) as soon as practicable and in any event within the earlier to occur of 120 days after the end of each fiscal year of the Borrower (or if earlier, 10 Business Days after the date required to be filed with the SEC) or the date on which another creditor of the Borrower first

receives such information, consolidated statements of income and cash flows of Holdings and its Subsidiaries for such year and a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, setting forth in each case in comparative form corresponding figures from the preceding annual audit, all in reasonable detail and reasonably satisfactory in scope to the Required Lenders and certified by independent public accountants of recognized standing whose opinion shall be unqualified and otherwise satisfactory in scope and substance to the Required Lenders, provided that such opinion shall be deemed otherwise satisfactory if prepared in accordance with GAAP and generally accepted accounting standards;

(c) together with each delivery of financial statements required by clauses (a) and (b) above, a Compliance Certificate (i) setting forth the aggregate amount of Restricted Payments made during such fiscal period and computations showing the calculation of the covenants in Sections 7.01 7.03(c), 7.04(d), 7.04(e) and 7.05; and (ii) stating that to the best of his or her knowledge, after due inquiry, there exists no Default, or if any such Default exists, specifying the nature and period of existence thereof and what action the Borrower proposes to take with respect thereto;

(d) promptly upon transmission thereof, copies of all such financial, proxy and information statements, notices and other reports as are sent to Holdings' stockholders and copies of all registration statements (with such exhibits as any holder reasonably requests) and all reports which are filed with the SEC;

(e) promptly upon receipt thereof, a copy of each other material report submitted to Holdings or any of its Subsidiaries by independent accountants in connection with any material annual, interim or special audit made by them of the books of Holdings or such Subsidiary pursuant to a request by Holdings' board of directors;

(f) promptly after the furnishing thereof, copies of any certificate, statement or report furnished to any other holder of the debt securities of any Loan Party pursuant to the terms of any indenture, loan, credit or similar agreement or instrument and not otherwise required to be furnished to the Lenders pursuant to any other clause of this Section 6.01;

(g) at the time of delivery of the financial statements referenced in Section 6.01(b), an annual forecast of Holdings for the then current fiscal year;

(h) annually, a report with respect to the real property of the Loan Parties substantially in form and substance similar to that certain Real Estate Supplement reported as of and for the fiscal year ended December 31, 2011 and filed with the SEC; and

(i) with reasonable promptness, such other financial data as the Agent or any Lender may reasonably request.

The Borrower also covenants that forthwith upon a Responsible Officer obtaining actual knowledge of a Default, it will deliver to the Agent and the Lenders an Officers' Certificate specifying the nature and period of existence thereof and what action the Borrower proposes to take with respect thereto.

Documents required to be delivered pursuant to Section 6.01(a), (b), (d) or (h) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender and (ii) the Borrower shall notify the Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions of such documents. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Agent and/or the Arranger may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

**6.02 Inspection of Property.** Holdings shall, and shall cause its Subsidiaries to, permit any employees or designated representatives of the Agent, any of its Related Parties or any other Lender with a Commitment in excess of \$5,000,000, at such Person's expense, to visit and inspect any of the properties of Holdings and its Subsidiaries, to examine their books and financial records and to make copies thereof or extracts therefrom and to discuss their affairs, finances and accounts with the Responsible Officers and the Loan Parties' independent certified public accountants, all at such times as the Borrower and such Person reasonably agree and as often as such Person may reasonably request; provided that a Responsible Officer of the Borrower shall have reasonable prior notice of, and may elect to be present during, discussions with the Borrower's independent public accountants.

**6.03 Covenant to Secure Obligations Equally.** If (x) Holdings, the Borrower or any Subsidiary shall create assume or otherwise incur any Lien upon any of its property or assets, whether now owned or hereafter acquired other than Liens permitted under Section 7.02 or (y) Holdings or the Borrower shall create, assume or otherwise incur any Lien upon any of its property or assets, whether now owned or hereafter acquired, to secure a Principal Credit Facility, then, in each case, Holdings, the Borrower or such Subsidiary, as applicable, shall make effective provision whereby the Obligations will be simultaneously secured by such Lien equally and ratably with any and all other Debt secured pursuant to terms and provisions, including an intercreditor agreement, reasonably satisfactory to the Agent so long as any such other Debt shall be so secured; provided that (i) to the extent the provision in the Note Purchase Agreement which requires ratable security for the obligations under the Note Purchase Agreement (or any similar provision therein relating to the

provision of security) is deleted or otherwise no longer of any force or effect then Holdings and its Subsidiaries shall not be required to secure the Obligations or take any other action pursuant to this Section 6.03 and (ii) the terms hereof shall exclude any purchase money or capital lease indebtedness permitted to be incurred under the terms of this Agreement.

**6.04 Maintenance of Properties; Insurance.** Holdings shall, and shall cause its Subsidiaries to (a) maintain or cause to be maintained in good repair, working order and condition all material properties used or useful at that time in its business and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof and (b) maintain insurance with reputable and financially sound insurers in such amounts and against such liabilities and hazards as is customarily maintained by other companies operating similar businesses and together with each delivery of financial statements under Section 6.01(b), upon the request of the Agent, deliver certificates of insurance to the foregoing effect to the Agent.

**6.05 Environmental and Safety Laws.**

(a) The Borrower shall deliver promptly to the Agent notice of (i) any material enforcement, cleanup, removal or other material governmental or regulatory action instituted or, to the Borrower's best knowledge, threatened against Holdings, the Borrower or any Significant Subsidiary pursuant to any Environmental and Safety Laws, (ii) all material Environmental Liabilities and Costs against or in respect of Holdings, the Borrower or any Significant Subsidiary or any of its properties and (iii) Holdings', the Borrower's or any Significant Subsidiary's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any of its properties that Holdings, the Borrower or such Significant Subsidiary has reason to believe could cause such property or any material part thereof to be subject to any material restrictions on its ownership, occupancy, transferability or use under any Environmental and Safety Laws.

(b) Holdings and the Borrower shall, and shall cause its Significant Subsidiaries to, keep and maintain its properties and conduct its and their operations in compliance with all applicable Environmental and Safety Laws except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

**6.06 Use of Proceeds.** Holdings shall, and shall cause its Subsidiaries to, use the proceeds of the Credit Extensions (a) to finance working capital, capital expenditures (including acquisitions) and other lawful corporate purposes, (b) to refinance certain existing indebtedness of the Borrower, (c) for support of commercial paper issued by the Borrower, (d) to finance permitted acquisitions and (e) to pay fees and expenses incurred in connection with this Agreement; provided that in no event shall the proceeds of any Credit Extension be used in contravention of any law or of any Loan Document.

**6.07 Appraisal Requirement.** To the extent the Borrower elects to have an appraisal performed for the purposes of determining the Appraised Value, such appraisal, and the resulting Appraised Value reflected therein, shall be updated no less frequently than every 24 months.

**6.08 Conversion.** On or before the occurrence of the Conversion, the Borrower shall deliver to the Agent, (a) a reaffirmation by the Borrower of its obligations hereunder and under the other Loan Documents, in form and substance satisfactory to the Agent, (b) copies of the applicable conversion documents, including any articles of conversion or other document to be filed with the Director of Commerce and Consumer Affairs of the State of Hawaii to give effect to the Conversion and (c) any additional conversion documentation or corporate authority or organizational documents with respect to the Borrower, in each case in form and substance satisfactory to the Agent as the Agent may reasonably request.

**6.09 Additional Guarantors.**

Each of Holdings and the Borrower covenants that concurrently with any such time as any Person becomes a guarantor or other obligor under any Principal Credit Facility (other than a Principal Credit Facility under which one or more Foreign Subsidiaries are the primary obligors), the Borrower shall cause such Person (each, an "Additional Guarantor") to (i) become a party to a guaranty in form and substance satisfactory to the Agent and (ii) deliver to the Agent such organization documents, resolutions and favorable opinions of counsel, all in form, content and scope similar to those delivered on the Initial Funding Date with respect to Holdings or otherwise reasonably satisfactory to the Agent.

**ARTICLE VII.**

**NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (with respect to Section 7.01, from and after the Initial Funding Date):

**7.01 Financial Covenants.**

(a) Minimum Consolidated Shareholders' Equity. Holdings shall not permit the Consolidated Shareholders' Equity at any time to be less than the sum of (a) 70% of the Consolidated Shareholders' Equity (based on the consolidated financial statements for the Borrower as of March 31, 2012 prepared on a pro forma basis after giving effect to the Restructuring Transactions) which shall in no event be less than \$612,000,000 plus (b) to the extent positive, 25% of Consolidated Net Income for each fiscal quarter ended after March 31, 2012 (such required minimum consolidated shareholders' equity amount not to be reduced by any consolidated net loss during any such fiscal quarter).

(b) Minimum Fixed Charge Coverage Ratio. Holdings shall not permit the Fixed Charge Coverage Ratio as of the last day of any fiscal quarter to be less than 1.50 to 1.0.

(c) Maximum Total Debt to Total Adjusted Asset Value Ratio. Holdings shall not permit the Total Debt to Total Adjusted Asset Value Ratio at any time to exceed 0.50 to 1.0.

At the Borrower's option, (a) Non-Recourse Debt of Holdings or its Subsidiaries with respect to Development Real Properties owned by Holdings or such Subsidiary may be excluded from the calculation of Total Debt (solely for purposes of the Total Debt to Total Adjusted Asset Value covenant set forth in this Section 7.01(c)) and (b) in each case the Applicable Value of the associated Development Real Properties of Holdings or such



Subsidiary shall be excluded from the calculation of Total Adjusted Asset Value; provided that: (i) if the amount of such excluded Non-Recourse Debt exceeds 70% of the book value of the associated Development Real Properties, then the Borrower may not elect to exclude the amount of such Non-Recourse Debt from the calculation of Total Debt unless the amount of such excluded Non-Recourse Debt is equal to or less than 70% of the Appraised Value of the associated Development Real Properties; (ii) the aggregate amount of Non-Recourse Debt excluded shall not at any time exceed 15% of the consolidated total assets of Holdings and its Subsidiaries (less cash, cash equivalents, marketable securities, goodwill, noncontrolling interest and pension assets) in accordance with GAAP for the most recent fiscal quarter with respect to which financial statements are required to be delivered pursuant to Section 6.01(a) or (b); and (iii) the exclusion of the Applicable Value of the associated Development Real Properties from Total Adjusted Asset Value referred to in clause (b) of this sentence shall be calculated only after giving effect to the reduction, if any, in Total Adjusted Asset Value required by the proviso in clause (c) of the definition of Total Adjusted Asset Value.

(d) Minimum Unencumbered Income Producing Assets Value to Unsecured Debt Ratio. The Borrower shall not permit the Unencumbered Income Producing Assets Value to Unsecured Debt Ratio at any time to be less than 1.75 to 1.0.

(e) Minimum Unencumbered Fixed Charge Coverage Ratio. In the event the Borrower elects to have an appraisal performed in accordance with the definition of Appraised Value, as provided in the definition of Total Adjusted Asset Value, Holdings and its Subsidiaries shall maintain, as of the last day of each fiscal quarter to occur after the fiscal quarter in which an Appraised Value from such appraisal was used, a minimum Unencumbered Fixed Charge Coverage Ratio of at least 1.50 to 1.00.

**7.02 Liens.** Holdings shall not, and shall not permit any Subsidiary to, create, assume or suffer to exist at any time any Lien on or with respect to any of its property or assets, whether now owned or hereafter acquired (whether or not provision is made for the equal and ratable securing of the Obligations in accordance with the provisions of Section 6.03), except:

(a) Liens for taxes not yet delinquent or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP;

(b) Liens (other than Liens pursuant to ERISA) incidental to the conduct of its business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of its property or assets, taken as a whole, or materially impair the use thereof in the operation of its business;

(c) Liens securing Debt between Subsidiaries or owing to the Borrower by a Subsidiary;

(d) subject to compliance with Section 7.05, any Lien created to secure all or any part of the purchase price, or to secure Debt incurred or assumed to pay all or any part of the purchase price or cost of construction, of any real property (or any improvement thereon) or tangible personal property (or any improvement thereon) acquired or constructed or capital lease transaction by the Borrower or a Subsidiary after the date of this Agreement, provided that

(i) any such Lien shall extend solely to the item or items of such property (or improvement thereon) so acquired or constructed and, if required by the terms of the instrument originally creating such Lien, other property (or improvement thereon) which is an improvement to or is acquired for specific use in connection with such acquired or constructed property (or improvement thereon) or which is real property being improved by such acquired or constructed property (or improvement thereon),

(ii) the principal amount of the Debt secured by any such Lien shall at no time exceed an amount equal to the fair market value of such property (or improvement thereon) at the time of such acquisition or construction, and

(iii) except with respect to any capital lease transaction, any such Lien shall be created contemporaneously with, or within 365 days after, the acquisition or construction of such property;

(e) subject to compliance with Section 7.05, other Liens of the Borrower and Subsidiaries existing on the Closing Date and listed on Schedule 7.02;

(f) subject to compliance with Section 7.05, Liens securing Debt other than as set forth in the foregoing clauses (a) - (e); provided that there shall not exist any Lien of any kind on the shares of the Voting Stock of any Subsidiary, unless Holdings and its Subsidiaries continue to own shares of Voting Stock of such Subsidiary which are not subject to any Lien and which represent a majority of the Voting Stock of such Subsidiary;

(g) materialmen's, mechanic's, carrier's, repairmen's and warehousemen's Liens in the ordinary course of business;

(h) judgment Liens to the extent such Liens have not caused an Event of Default under Section 8.01(i);

(i) utility easements, building restrictions and such other encumbrances or charges against real property as are of a nature generally existing with respect to properties of a similar character and which do not in any material way affect the marketability of the same or interfere with the use thereof in the business of the Borrower or the Subsidiaries;

(j) Liens (other than any Lien imposed by ERISA) arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation, including, without limitation, imposed by ERISA;

(k) deposits to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; and

(l) Liens securing commercial letter of credits; provided that no such Lien shall extend to or cover any assets of the Borrower or any of its Subsidiaries other than the inventory (and bills of lading and other documents related thereto) being financed by any such commercial letter of credits.

**7.03 Loans and Advances.** Holdings shall not permit, and shall not permit any Subsidiary to, create, or permit to remain outstanding at any time any loan or advance to any Person, except (i) Holdings may make loans or advances to the Borrower and (ii) the Borrower and its Subsidiaries may:

(a) subject to Section 7.05, make or permit to remain outstanding loans and advances to the Borrower and Subsidiaries;

(b) make or permit to remain outstanding travel and other like advances and customary employee benefits in reasonable amounts to employees in the ordinary course of business;

(c) make or permit to remain outstanding Third Party loans and advances on standard arm's-length terms, all such loans and advances not to exceed an aggregate of \$50,000,000 at any time outstanding;

(d) advances of payroll payments to employees in the ordinary course of business; and

(e) make or permit to remain outstanding purchase money loans to Persons to whom it sells real property in the ordinary course of its Property Development Activities and its Property Management Business, provided that the aggregate amount of all such purchase money loans may not exceed at any one time an amount equal to 15% of Consolidated Total Assets of Holdings at the end of the fiscal quarter most recently-ended as of any date of determination (or 15% of the Consolidated Total Assets of the Borrower, if such fiscal quarter is the fiscal quarter ended March 31, 2012).

**7.04 Merger and Sale of Assets.** Holdings shall not, and shall not permit any Subsidiary to, merge with or into or consolidate with any other Person or sell, lease, transfer or otherwise dispose of its assets, except that:

(a) any Subsidiary of the Borrower may merge with the Borrower, so long as the Borrower is the surviving Person;

(b) any Subsidiary of the Borrower may merge with another Subsidiary of the Borrower, or sell, lease, transfer or otherwise dispose of its assets to another Subsidiary of the Borrower or to the Borrower;

(c) the Borrower or any of its Subsidiaries may sell, exchange, lease, transfer or otherwise dispose of assets (other than Undeveloped Land) in the ordinary course of business;

(d) the Borrower or any of its Subsidiaries may sell, lease, transfer or otherwise dispose of assets (other than Undeveloped Land) to Third Parties so long as (i) the fair market value thereof on the date sold, leased, transferred or otherwise disposed of, together with the fair market value of all other assets sold, leased, transferred or otherwise disposed of to Third Parties pursuant to this clause (d) within the prior 12 months, does not represent more than 20% of the Consolidated Total Assets of Holdings (or 20% of the Consolidated Total Assets of the Borrower, if such fiscal quarter is the fiscal quarter ended March 31, 2012) and (ii) such assets, together with all other assets sold or otherwise disposed of to Third Parties pursuant to this clause (d) since the beginning of the most recently ended fiscal year, did not contribute more than 10% of EBITDA determined as of the most recent fiscal quarter with respect to which financial statements are required to be delivered pursuant to Section 6.01(a) or (b); provided that, notwithstanding the percentage limitations appearing in clauses (i) and (ii), above, sales or dispositions in excess thereof in a twelve month period may be made for cash if the proceeds of each such excess sale or disposition (net of taxes thereon) are fully utilized in the acquisition of Permitted Assets and/or applied to the repayment of Permitted Debt, in each case within 365 days from the date of such sale or disposition;

(e) the Borrower or any of its Subsidiaries may (i) engage in Code §1031 like-kind exchanges with respect to Undeveloped Land, and (ii) sell, lease, transfer or otherwise dispose of Undeveloped Land to (A) the Borrower or any of its Subsidiaries, (B) a Person which is not (and after giving effect thereto will not be) a Subsidiary of the Borrower, solely in exchange for an equity interest in such Person (unless at the time thereof the intention was that such Person would sell such land in its undeveloped state or that any proceeds would be received on or with respect to such equity interest prior to the time such land is developed for commercial or residential purposes), or (C) Third Parties; provided that if in any twelve month period the aggregate fair market value of Undeveloped Land which is sold, leased, transferred or otherwise disposed of pursuant to this clause (C), is greater than \$100,000,000, then, within 365 days from the date of each sale, lease, transfer or other disposition which resulted in the \$100,000,000 threshold being exceeded, an amount equal to such excess (net of taxes thereon) shall be fully utilized in the acquisition of Permitted Assets and/or applied to the repayment of Permitted Debt;

(f) the Borrower may merge or consolidate with another corporation or other Person if (i) the Borrower will be the continuing or surviving entity and (ii) no Default would exist immediately after giving effect to such merger or consolidation; and

(g) Holdings, the Borrower, and their Subsidiaries may consummate the Restructuring Transactions and all transactions in connection therewith to the extent consistent with the Separation Agreement and otherwise disclosed to the Lenders prior to the Closing Date with additions or modifications to the extent not materially adverse to the Lenders.

**7.05 Priority Debt.** Holdings shall not, and shall not permit any Subsidiary to, permit the aggregate amount of Priority Debt to exceed the Priority Debt Limit.

At the Borrower's option, Non-Recourse Debt of Holdings or its Subsidiaries with respect to Development Real Properties owned by Holdings or such Subsidiary may be excluded from the calculation of Priority Debt (solely for purpose of the Priority Debt covenant set forth in this Section 7.05); provided that: (i) if the amount of such excluded Non-Recourse Debt exceeds 70% of the book value of the associated Development Real Properties, then the Borrower may not elect to exclude the amount of such Non-Recourse Debt from the calculation of Total Debt unless the amount of such excluded Non-Recourse Debt is equal to or less than 70% of the Appraised Value of the associated Development Real Properties; (ii) the aggregate amount of Non-Recourse Debt excluded shall not at any time exceed 15% of the total assets of Holdings and its Subsidiaries (less cash, cash equivalents, marketable securities, goodwill, noncontrolling interest and pension assets) in accordance with GAAP for the most recent fiscal quarter; and (iii) the exclusion of the Applicable

Value of the associated Development Real Properties from Total Adjusted Asset Value referred to in clause (b) of this sentence shall be calculated only after giving effect to the reduction, if any, in Total Adjusted Asset Value required by the proviso in clause (c) of the definition of Total Adjusted Asset Value.

7.06 **[Reserved]**.

7.07 **[Reserved]**.

7.08 **Transactions with Holders of Partnership or Other Equity Interests.** Holdings shall not, and shall not permit any Subsidiary to, directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise deal with, in the ordinary course of business or otherwise (a) any Affiliate (other than in the capacity of an employee, director or officer), or (b) any Person owning, beneficially or of record, directly or indirectly, 5% or more of the outstanding voting stock of Holdings or any executive officer (as such term is defined under the Securities Exchange Act of 1934) of any Loan Party (other than in such Person's capacity as an employee); provided, however, that such acts and transactions may be performed or engaged in if (i) they are entered into upon terms no less favorable to Holdings, the Borrower or such Subsidiary than if no such relationship described in clauses (a) or (b) above existed and such acts or transactions are otherwise permitted by this Agreement, (ii) they are between or among Holdings and/or any of its wholly-owned Subsidiaries, (iii) they are otherwise permitted under Section 7.12, or (iv) the Restructuring Transactions.

7.09 **Use of Proceeds.** The Borrower shall not use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.10 **Transfer of Assets to Subsidiaries.** Holdings shall not, and shall not permit the Borrower to, transfer (other than in the ordinary course of business or with respect to similarly situated real estate companies) any assets to a Subsidiary for the sole purpose of improving the credit position of such Subsidiary in connection with a financing transaction, except that this restriction shall not apply to any asset the financing of which constitutes Non-Recourse Debt.

7.11 **[Reserved]**.

7.12 **Restricted Payments.** Holdings covenants that it will not declare or pay any dividend or other distribution on any class of its capital stock or other equity interests, redeem or repurchase any such interests or make any other distribution on account of any such interests (all of the foregoing being "**Restricted Payments**") except that Holdings may make a Restricted Payment in any amount so long as (a) no Default shall then exist or would exist after giving effect to any such Restricted Payment and (b) any such Restricted Payment will not violate any applicable law or regulation.

7.13 **Sanctions.** Neither Holdings nor the Borrower shall permit any Loan or the proceeds of any Loan, directly or indirectly, (i) to be lent, contributed or otherwise made available to fund any activity or business in any Designated Jurisdiction; (ii) to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions; or (iii) in any other manner that will result in any violation by any Person (including any Lender, Arranger, Agent, L/C Issuer or Swing Line Lender).

## ARTICLE VIII.

### EVENTS OF DEFAULT AND REMEDIES

8.01 **Events of Default.** Any of the following shall constitute an Event of Default:

(a) **Non-Payment.** The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein or in any other Loan Document, any amount of principal of any Loan or any L/C Obligation, or (ii) within five days after the same becomes due, any interest on any Loan or on any L/C Obligation, any fee due hereunder or any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants.** The Borrower or any other Loan Party fails to perform or observe any agreement contained in Sections 6.01(a)-6.01(c), 6.03, 6.06 and 6.08 or Article VII hereof;

(c) **Other Defaults.** The Borrower or any other Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure shall not be remedied within 30 days after any Responsible Officer obtains actual knowledge thereof; or

(d) **Representations and Warranties.** Any representation or warranty made by any Loan Party herein or in any other Loan Document or by any Loan Party or any of its officers in any writing furnished in connection with or pursuant to this Agreement shall be false or misleading in any material respect on the date as of which made; provided that to the extent that such breach of representation or warranty relates to clause (c) of the definition of Material Adverse Effect, such breach of representation or warranty shall only constitute an Event of Default under this subsection (d) if such Loan Party knowingly breached such representation or warranty; or

(e) **Cross-Default.** Any Loan Party or any Subsidiary defaults in any payment of principal of, or premium or interest on, any obligation for money borrowed (or of any obligation under conditional sale or other title retention agreement or of any obligation issued or assumed as full or partial payment for property whether or not secured by a purchase money mortgage or of any obligation under notes payable or drafts accepted representing extensions of credit) other than the Obligations beyond any period of grace provided with respect thereto, or any Loan Party or any Subsidiary fails to perform or observe any other agreement, term or condition contained in any agreement (or any other event thereunder or under any such agreement occurs and is continuing) and the effect of such payment default or other failure or event is to cause, or to permit the holder or holders of such obligation to cause, with the giving of notice if required, such obligation to be demanded or to become due (or such obligation becomes subject to required repurchase or an offer to repurchase by any Loan Party or any Subsidiary) prior to any stated maturity; provided that the aggregate amount of all obligations as to which such a payment default or other failure or event shall occur exceeds \$15,000,000; or

(f) Insolvency Proceedings, Etc.

(i) Any Loan Party or any Significant Subsidiary makes an assignment for the benefit of creditors or is generally not paying its debts as such debts become due; or

(ii) any decree or order for relief in respect of any Loan Party or any Significant Subsidiary is entered under any Debtor Relief Laws of any jurisdiction; or

(iii) any Loan Party or any Significant Subsidiary petitions or applies to any tribunal for, or consents to, the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official of any Loan Party or any such Significant Subsidiary, or of any substantial part of the assets of any Loan Party or any such Significant Subsidiary, or commences a voluntary case under the Bankruptcy Code of the United States or any proceedings (other than proceedings for the voluntary liquidation and dissolution of a Significant Subsidiary) relating to any Loan Party or any Significant Subsidiary under any other Debtor Relief Laws; or

(iv) any petition or application of the type described in clause (iii) above is filed, or any such proceedings are commenced, against any Loan Party or any Significant Subsidiary and such Loan Party or such Significant Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein, or an order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings, and such order, judgment or decree remains unstayed and in effect for more than 45 days; or

(g) Dissolution, Etc.

(i) Any order, judgment or decree is entered in any proceedings against any Loan Party or any Significant Subsidiary decreeing the dissolution of such Loan Party or such Significant Subsidiary and such order, judgment or decree remains unstayed and in effect for more than 45 days; or

(ii) any order, judgment or decree is entered in any proceedings against any Loan Party or any Significant Subsidiary decreeing a split-up of such Loan Party or such Significant Subsidiary which requires the divestiture of (A) assets representing a substantial part, or the stock of, or other ownership interest in, a Significant Subsidiary whose assets represent a substantial part of Consolidated Total Assets or (B) assets or the stock of or other ownership interest in a Significant Subsidiary that has contributed a substantial part of Consolidated Net Income for any of the three fiscal years then most recently ended, and such order, judgment or decree remains unstayed and in effect for more than 45 days; or

(h) ERISA. (i) Any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Borrower or any ERISA Affiliate that a Plan may become a subject of such proceedings, (iii) the aggregate amount under all Plans of the fair market value of the assets (within the meaning of Section 303 of ERISA) is less than 70% of the "Funding Target" (within the meaning of Section 303 of ERISA), (iv) the Borrower or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Borrower or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) any Loan Party or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of any Loan Party or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect of the type described in clause (a) or (b) of the definition thereof; or

(i) Judgments. Any judgment or decree in the amount of \$25,000,000 or more shall be entered against any Loan Party or any of its Subsidiaries that is not paid or fully covered (beyond any applicable deductibles) by insurance and such judgment or decree shall not have been vacated, discharged or stayed or bonded pending appeal within 60 days from the entry thereof; or

(j) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) Change of Control. There occurs any Change of Control.

**8.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Agent or any Lender.

**8.03 Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16, be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.15; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by law.

Subject to Sections 2.03(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

## ARTICLE IX.

### AGENT

**9.01 Appointment and Authority.** Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent, the Lenders and the L/C Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**9.02 Rights as a Lender.** The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.** The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, its Subsidiaries or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default in writing is given to the Agent by the Borrower, a Lender or the L/C Issuer.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

**9.04 Reliance by Agent.** The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.** The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.06 Resignation of Agent.**

(a) The Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, in each case solely in its capacity as Agent and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Agent (other than as provided in Section 3.01(g), and other than any rights to indemnity payments or other amounts owed to the retiring or removed Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Agent was acting as Agent.

(d) Any resignation by Bank of America as Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment by the Borrower of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable, (ii) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

**9.07 Non-Reliance on Agent and Other Lenders.** Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or other titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent, a Lender or the L/C Issuer hereunder.

## ARTICLE X.

### MISCELLANEOUS

**10.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;
- (b) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;
- (c) reduce the principal of, or the rate of interest specified herein on, any Loan or Unreimbursed Amounts under Letters of Credit, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate and (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;
- (d) waive any condition set forth in Section 4.03 without the written consent of each Lender;
- (e) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;
- (f) release all or substantially all of the value of the Guaranty without the written consent of each Lender; or
- (g) change any provision of this Section or the definition of "Required Lenders" without the written consent of each Lender;

and, provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of the Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding the foregoing, the Borrower may, by written notice to the Agent from time to time, make one or more offers (each, a "Loan Modification Offer") to all the Lenders to make one or more amendments or modifications to (A) allow the maturity of the Committed Loans of the accepting Lenders to be extended and (B) increase the Applicable Rate and/or fees payable with respect to the Committed Loans and Commitments of the accepting Lenders ("Permitted Amendments") pursuant to procedures reasonably specified by the Agent and reasonably acceptable to the Borrower. Such notice shall set forth (i) the terms and conditions of the requested Permitted Amendment and (ii) the date on which such Permitted Amendment is requested to become effective. Permitted Amendments shall become effective only with respect to the Committed Loans and/or Commitments of the Lenders that accept the applicable Loan Modification Offer (such Lenders, the "Accepting Lenders") and, in the case of any Accepting Lender, only with respect to such Lender's Committed Loans and/or Commitments as to which such Lender's acceptance has been made. The Borrower, each other Loan Party and each Accepting Lender shall execute and deliver to the Agent a Loan Modification Agreement and such other documentation as the Agent shall reasonably specify to evidence the acceptance of the Permitted Amendments and the terms and conditions thereof, and the Loan Parties shall also deliver such resolutions, opinions and other documents as reasonably requested by the Agent. The Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each of the parties hereto hereby agrees that (1) upon the effectiveness of any Loan Modification Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Permitted Amendment evidenced thereby and only with respect to the Committed Loans and Commitments of the Accepting Lenders as to which such Lenders' acceptance has been made and (2) any applicable Lender who is not an Accepting Lender may be replaced by the Borrower in accordance with Section 10.13.

In addition, notwithstanding anything to the contrary contained in this Section 10.01 or any other Loan Document, if the Agent and the Borrower have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Agent and the Borrower shall be permitted to amend such provision without the consent of any Lender if such amendment, supplement or waiver is delivered in order to cure ambiguities, omissions, mistakes or defects in such respective Loan Document and so long as such amendment, supplement or waiver does not adversely affect the rights of any Lender.

#### **10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any other Loan Party, the Agent, the L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b), below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient. .

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expense are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party or any of its Related Parties.

(d) Change of Address, Etc. Each of the Borrower, the Agent, the L/C Issuer and the Swing Line Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower, the Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Agent, L/C Issuer and Lenders. The Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices, Letter of Credit Applications and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower, except to the extent such



losses, costs, expenses and liabilities resulted from the gross negligence or willful misconduct of such Person. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies.** No failure by any Lender, the L/C Issuer or the Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrower shall pay (i) except as provided in Section 10.06(b)(iv), all reasonable and documented out-of-pocket expenses incurred by the Agent and its Affiliates (including the reasonable fees, charges and disbursements of Moore & Van Allen PLLC, as counsel for the Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Agent, any Lender or the L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit; provided, however, that this Section 10.04(a) shall not apply with respect to Taxes.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including, without limitation, the fees, charges and disbursements of one primary legal counsel to the Agent, the Arrangers and their Affiliates and the Lenders and, if required, one local counsel in each relevant jurisdiction (and, in the case of an actual or perceived conflict of interest where the Indemnitee informs the Borrower of such conflict and retains its own counsel, of one additional counsel for each such affected Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) result from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Agent (or any sub-agent thereof), the L/C Issuer, the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent), the L/C Issuer, the Swing Line Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the outstanding Loans, unfunded Commitments and participation interests in Swing Line Loans and L/C Obligations of all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or the L/C Issuer or the Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent), the L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, neither any Loan Party nor any Indemnitee shall assert, and each party hereby waives, any claim against any Indemnitee or any Loan Party, on any theory of liability, for special,

indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof (except that an Indemnitee may assert, and does not waive, a claim against any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party). No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after written demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside**. To the extent that any payment by or on behalf of the Borrower is made to the Agent, the L/C Issuer or any Lender, or the Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **10.06 Successors and Assigns**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of the L/C Issuer and the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. Such processing and recordation fees, together with the costs and expenses of the Agent incurred in connection with the execution and delivery of such Assignment and Assumption, shall be paid by either the assignor or the assignee. The assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of its Subsidiaries or Affiliates, (B) a natural person or (C) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (C).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Agent, the applicable pro rata share of Committed Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Committed Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, and upon receipt of the original Note from the assignor marked "Cancelled," the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than a natural Person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain the holder of its Loans and owner of its participations or other interest in any Letter of Credit for all purposes hereunder, (iii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iv) the Borrower, the Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 10.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register");

provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time a Lender acting as L/C Issuer or Swing Line Lender assigns all of its Commitment and Loans pursuant to subsection (b) above, such Lender may, (i) upon 30 days' notice to the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint any from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of the applicable Lender as L/C Issuer or Swing Line Lender, as the case may be. Any such appointment of a successor L/C Issuer or Swing Line Lender by the Borrower pursuant to this Section 10.06 shall not become effective until acceptance of the appointment by the successor L/C Issuer or Swing Line Lender. If a Lender resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If a Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the applicable resigning L/C Issuer to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit.

**10.07 Treatment of Certain Information; Confidentiality**. Each of the Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement (or any Eligible Assignee invited to be a Lender pursuant to Section 2.14) or (ii) any actual or prospective counterparty (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower (only to the extent that such availability of information is not to the Agent, such Lender, or such L/C Issuer's knowledge in breach of the confidentiality requirements provided herein).

For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary (or any Affiliate of the Borrower or any Related Party of the Borrower or any such Subsidiary or Affiliate) relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable law, including Federal and state securities laws.

**10.08 Right of Setoff**. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, the L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmaturing or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such

Lender, the L/C Issuer or their respective affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.** If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Agent the assignment fee (if any) specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO

AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15 Waiver of Jury Trial**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.16 No Advisory or Fiduciary Responsibility**. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Agent, the Arrangers and the Lenders are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Subsidiaries and Affiliates, on the one hand, and the Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agent, each Arranger and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their respective Subsidiaries and Affiliates, or any other Person and (B) neither the Agent, any Arranger nor any Lender has any obligation to the Borrower, any other Loan Party or any of their respective Subsidiaries and Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Subsidiaries and Affiliates, and neither the Agent, any Arranger nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Subsidiaries and Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Agent, the Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.17 Electronic Execution of Assignments and Certain Other Documents**. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.18 USA PATRIOT Act**. Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

ALEXANDER & BALDWIN, INC.

By: /s/ Paul K. Ito

Name: Paul K. Ito

Title: Vice President and Controller

---

BANK OF AMERICA, N.A.,  
as Agent

By: /s/ Brenda H. Little

Name: Brenda H. Little

Title: Vice-President

---



BANK OF AMERICA, N.A.,  
as Lender, L/C Issuer and Swing Line Lender

By: /s/ Gordon H. Gray

Name: Gordon H. Gray

Title: Senior Vice President

---

FIRST HAWAIIAN BANK,  
as a Lender and L/C Issuer

By: /s/ Jon T. Fukagawa

Name: Jon T. Fukagawa

Title: Vice President

---

WELLS FARGO BANK, N.A.  
as Lender

By: /s/ Guy Chruchill

Name: Guy Churchill

Title: Vice President

---

AMERICAN AGCREDIT, PCA,  
as Lender

By: /s/ Gary Van Schuyver

Name: Gary Van Schuyver

Title: Vice President

---

BANK OF HAWAII,  
as Lender

By: /s/ Darrell McCorquodale

Name: Darrell McCorquodale

Title: Vice President

---

AMERICAN SAVINGS BANK, F.S.B.,  
as Lender

By: /s/ Rian DuBach

Name: Rian DuBach

Title: Vice President

---

CENTRAL PACIFIC BANK,  
as Lender

By: /s/ Garrett Grace

Name: Garrett Grace

Title: Senior Vice President

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June 4, 2012

Matson Navigation Company, Inc.  
555 Market Street, 7th Floor  
Oakland, CA 94607

Re: Credit Agreement, dated as of August 5, 2011 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), among Matson Navigation Company, Inc., a Hawaii corporation (the "Borrower"), the Lenders from time to time party thereto, and First Hawaiian Bank, as Agent.

Ladies and Gentlemen:

Reference is made to the Credit Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Credit Agreement.

The Lenders hereby consent to the transactions set forth in (i) the Agreement and Plan of Merger dated as of February 13, 2012 by and between Alexander & Baldwin Holdings, Inc., Alexander & Baldwin, and A&B Merger Corporation (in the form publicly filed by Alexander & Baldwin on February 14, 2012) and (ii) the Separation and Distribution Agreement anticipated to be dated as of June 8, 2012 by and between Alexander & Baldwin Holdings, Inc. and A&B II, Inc. in the form publicly filed by Alexander & Baldwin on May 30, 2012.

Without limiting the foregoing, notwithstanding the definition of "Change of Control" in Section 1.01 of the Credit Agreement, the Lenders hereby agree that none of the following transactions shall constitute a "Change of Control": (i) the Merger (as defined in the Merger Agreement) and resulting indirect ownership of the Borrower by Alexander & Baldwin Holdings, Inc. (a newly formed corporation that as of the date of such Merger will be owned by the then existing shareholders of Alexander & Baldwin), (ii) the conversion of Alexander & Baldwin into a limited liability company ("Alexander & Baldwin, LLC"), and (iii) the distribution by Alexander & Baldwin, LLC of all of the shares of capital stock of the Borrower to Alexander & Baldwin Holdings, Inc.

Furthermore, the Borrower and the Lenders hereby agree that the definition of "Lien" in Section 1.01 of the Credit Agreement shall be hereby amended and restated as follows: "Lien" means any mortgage, deed of trust, pledge, security interest, encumbrance, lien or charge of any kind (including any purchase money mortgage, conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of any financing statement (exclusive of filings for precautionary purposes only) under the Uniform Commercial Code of any jurisdiction)."

Except as modified hereby, the Credit Agreement remains in full force and effect.

This letter may be executed in any number of counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one agreement. Delivery of an executed counterpart of this letter by facsimile or .pdf shall be effective as an original.

*[Remainder of page intentionally blank.]*

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This letter shall be governed by and construed in accordance with the laws of the State of New York.

Very truly yours,

FIRST HAWAIIAN BANK,  
as Agent, L/C Issuer and Lender

By: /s/ Susan Takeda  
Name: Susan Takeda  
Title: Vice President

---

LENDERS:

BANK OF AMERICA, N.A.,  
as a Lender and L/C Issuer

By: /s/ Gordon H. Gray  
Name: Gordon H. Gray  
Title: Senior Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as a Lender

By: /s/ Dhiren Desai  
Name: Dhiren Desai  
Title: Vice President

DNB NOR BANK ASA,  
as a Lender

By: /s/ Giacomo Landl  
Name: Giacomo Landl  
Title: Senior Vice President

By: /s/ Nikolai A. Nachamkin  
Name: Nikolai A. Nachamkin  
Title: Senior Vice President

AMERICAN SAVINGS BANK, F.S.B.  
as a Lender

By: /s/ Rian DuBach  
Name: Rian DuBach  
Title: Vice President

BANK OF HAWAII,  
as a Lender

By: /s/ Darrell McCorquodale  
Name: Darrell McCorquodale  
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,  
as a Lender

By: /s/ Blake Malia  
Name: Blake Malia  
Title: Vice President

ACCEPTED AND AGREED TO:

BORROWER: MATSON NAVIGATION COMPANY, INC.,  
a Hawaii corporation

By: /s/ Joel M. Wine  
Name: Joel M. Wine  
Title: Senior Vice President and Chief Financial Officer

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**MATSON NAVIGATION COMPANY, INC.**

**MATSON, INC.**

\$105,000,000 ORIGINAL PRINCIPAL AMOUNT OF SERIES B SENIOR GUARANTEED NOTES DUE 2020

\$77,500,000 ORIGINAL PRINCIPAL AMOUNT OF SERIES C-1 SENIOR GUARANTEED NOTES DUE 2023

\$55,000,000 ORIGINAL PRINCIPAL AMOUNT OF SERIES C-2 SENIOR GUARANTEED NOTES DUE 2027

\$37,500,000 ORIGINAL PRINCIPAL AMOUNT OF SERIES C-3 SENIOR GUARANTEED NOTES DUE 2032

SECOND AMENDED AND RESTATED

NOTE AGREEMENT

June 4, 2012

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## **Schedules and Exhibits**

### Purchaser Schedules

Exhibit A-1	--	Form of Series C-1 Note
Exhibit A-2	--	Form of Series C-2 Note
Exhibit A-3	--	Form of Series C-3 Note
Exhibit B	--	Form of Funding Instruction Letter
Exhibit C-1	--	Form of Multiparty Guaranty
Exhibit C-2	--	Form of Indemnity and Contribution Agreement
Schedule 1B	--	Corporate Organization Chart
Schedule 6C(1)	--	Existing Liens on Closing Date
Schedule 8A	--	Material Subsidiaries/Material Domestic Subsidiaries on Closing Date
Schedule 8G	--	Agreements Restricting Incurrence of Debt

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**MATSON NAVIGATION COMPANY, INC.**  
**MATSON, INC.**  
**1411 Sand Island Parkway**  
**Honolulu, Hawaii 96819**

As of June 4, 2012

The Purchasers named in the Purchaser Schedules hereto  
c/o Prudential Capital Group  
2029 Century Park East, Suite 710  
Los Angeles, CA 90067

Ladies and Gentlemen:

The undersigned, Matson Navigation Company, Inc., a Hawaii corporation ("**Matson Navigation**"), hereby agrees with you as set forth below.

**1. BACKGROUND; EXISTING NOTES; AUTHORIZATION OF SERIES C NOTES.**

**1A. Amendment and Restatement.** Effective as of the Closing, this Agreement amends, restates and replaces in its entirety that certain Amended and Restated Note Agreement, dated as of May 19, 2005 (as amended, restated, supplemented or otherwise modified, the "**Prior Agreement**"), by and between Matson Navigation, on the one hand, and the holders of the Series B Notes, on the other hand.

Certain capitalized terms used in this Agreement are defined in paragraph 10; references to a "paragraph" are, unless otherwise specified, to one of the paragraphs of this Agreement, and references to an "Exhibit" or "Schedule" are, unless otherwise specified, to one of the exhibits or schedules to this Agreement.

**1B. Reorganization.** Matson Navigation has advised the Purchasers of a reorganization pursuant to which:

(i) A&B has incorporated Alexander & Baldwin Holdings, Inc., a Hawaii corporation subsequently to be re-named "Matson, Inc." as provided in clause (iv) of this paragraph 1B ("**A&B Holdings**", or the "**Company**"), as a new, wholly-owned direct Subsidiary of A&B, and A&B Holdings has incorporated A&B Merger Corporation, a Hawaii corporation ("**A&B Merger Corp.**"), as a new, wholly-owned direct Subsidiary of A&B Holdings, and, on or about June 6, 2012 A&B Merger Corp. will merge with and into A&B with A&B being the survivor of such merger (the "**Merger**"), after giving effect to which A&B Holdings will hold all of the capital stock of A&B and the stockholders of A&B Holdings will be the Persons which were the stockholders of A&B immediately prior to giving effect to the Merger;

(ii) after consummation of the Merger, A&B will convert into a Hawaii limited liability company to be named "Alexander & Baldwin, LLC" pursuant to applicable Hawaii law (the "**Conversion**") and will thereafter distribute all of the capital stock of Matson Navigation to A&B Holdings (the "**Distribution**"), after giving effect to which Matson Navigation will be a sister of A&B and a direct, wholly-owned Subsidiary of A&B Holdings;

(iii) after consummation of the Distribution, A&B Holdings will contribute all of the membership interests in A&B to A & B II, Inc., a Hawaii corporation subsequently to be re-named "Alexander & Baldwin, Inc." ("**New A&B**"), a newly formed, wholly-owned direct Subsidiary of A&B Holdings (the "**Contribution**"), after giving effect to which the direct parent and holder of all of the membership interests in A&B will be New A&B, and the direct parent and holder of all of the capital stock of both Matson Navigation and New A&B will be A&B Holdings (the collective transactions described in the foregoing portions of this paragraph 1B being referred to herein as the "**Reorganization**"); and

(iv) after consummation of the Contribution and after the close of the New York Stock Exchange on or about June 29, 2012, A&B Holdings will distribute all of the capital stock of New A&B to the public stockholders of A&B Holdings (the "**Spin-Off**"), following which the name change of A&B Holdings to "Matson, Inc." will become effective.

Matson Navigation represents and warrants that (a) the foregoing portions of this paragraph 1B constitute a materially accurate description of the material steps of the Reorganization and Spin-Off and the sequence of such steps, and (b) the corporate organization chart set forth in Schedule 1B (to the extent of the detail set forth therein) accurately depicts the organizational structure of the Company and Matson Navigation immediately after giving effect to the consummation of the Reorganization and Spin-Off.

**1C. Existing Notes.** Pursuant to the terms of the Prior Agreement, Matson Navigation has issued its 4.79% Series B Senior Secured Notes due May 19, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "**Series B Notes**") in the original aggregate principal amount of \$105,000,000. The terms "**Series B Note**" and "**Series B Notes**" as used herein shall include each Series B Note delivered pursuant to any provision of the Prior Agreement and each Series B Note delivered in substitution or exchange therefor pursuant to any provision of the Prior Agreement or this Agreement.

**1D. Authorization of Issue of Series C Notes.** The Company has authorized (i) the issue of its senior guaranteed promissory notes (as amended, restated, supplemented or otherwise modified from time to time, the "**Series C-1 Notes**") in the aggregate principal amount of \$77,500,000, to be dated the date of issue thereof, to mature eleven years after the date of original issuance, to bear interest on the unpaid balance thereof from the date thereof until the principal thereof shall have become due and payable at the rate of 3.66% per annum and on overdue payments at the rate per annum set forth therein, and to be substantially in the form of Exhibit A-1 attached hereto, (ii) the issue of its senior guaranteed promissory notes (as amended, restated, supplemented or otherwise modified from time to time, the "**Series C-2 Notes**") in the aggregate principal amount of \$55,000,000, to be dated the date of issue thereof, to mature fifteen years after the date of original issuance, to bear interest on the unpaid balance thereof from the date thereof until the principal thereof shall have become due and payable at the rate of 4.16% per annum and on overdue payments at the rate per annum set forth therein, and to be substantially in the form of Exhibit A-2 attached hereto and (iii) the issue of its senior guaranteed promissory notes (as amended, restated, supplemented or otherwise modified from time to time, the "**Series C-3 Notes**") in the aggregate principal amount of \$37,500,000, to be dated the date of issue thereof, to mature twenty years

after the date of original issuance, to bear interest on the unpaid balance thereof from the date thereof until the principal thereof shall have become due and payable at the rate of 4.31% per annum and on overdue payments at the rate per annum set forth therein, and to be substantially in the form of Exhibit A-3 attached hereto. The Series C-1 Notes, the Series C-2 Notes and the Series C-3 Notes are referred to collectively herein as the “**Series C Notes**”. The term “**Series C-1 Notes**” as used herein shall include each such Series C-1 Note delivered pursuant to any provision of this Agreement and each such Series C-1 Note delivered in substitution or exchange for any other Series C-1 Note pursuant to any such provision. The term “**Series C-2 Notes**” as used herein shall include each such Series C-2 Note delivered pursuant to any provision of this Agreement and each such Series C-2 Note delivered in substitution or exchange for any other Series C-2 Note pursuant to any such provision. The term “**Series C-3 Notes**” as used herein shall include each such Series C-3 Note delivered pursuant to any provision of this Agreement and each such Series C-3 Note delivered in substitution or exchange for any other Series C-3 Note pursuant to any such provision. The term “**Notes**” as used herein shall include each Series B Note and each Series C Note.

## 2. MODIFICATION OF SERIES B NOTES; PURCHASE AND SALE OF SERIES C NOTES; RELEASE OF COLLATERAL.

**2A. Modification of Series B Notes.** On or before 10:00 a.m. San Francisco time on June 22, 2012, Matson Navigation shall have delivered written notice to PIM, referring to this paragraph 2A and specifying whether Matson Navigation elects the Coupon Adjustment option (as defined below) or the One-Time Fee option (as defined below) (the “**Election Notice**”) provided that failure of Matson to deliver the Election Notice on or before 10:00 a.m. San Francisco time on June 22, 2012 will be deemed to constitute its election of the One-Time Fee option. If the Election Notice specifies Matson Navigation’s election of the Coupon Adjustment option, then Matson Navigation and the holders of the Series B Notes agree that, notwithstanding anything to the contrary in the Series B Notes, the Prior Agreement or any of this Agreement or the other Transaction Documents, the coupon percentage rate per annum of each of the Series B Notes will be increased by an amount determined by PIM in accordance with its standard practices as of the date hereof which determination will take into account, among other things, the change in creditworthiness of Matson Navigation after giving effect to the consummation of the Reorganization and Spin-Off, the making of the A&B Capital Contribution and the incurrence of the Debt as a result of each of the consummation of the Reorganization and Spin-Off, effective on and after the date of the consummation of the Spin-Off, (the “**Coupon Adjustment**”), without the need or requirement for any further action by the Company, any holder of a Series B Note or any other Person. If Matson Navigation’s election of the Coupon Adjustment option is not specified in its Election Notice delivered (or if no Election Notice has been delivered) on or before 10:00 a.m. San Francisco time on June 22, 2012, then Matson Navigation and the holders of the Series B Notes agree that Matson Navigation will pay the holders of the Series B Notes on the date of the consummation of the Spin-Off their ratable share of a one-time fee equivalent of the coupon adjustment that would have applied under the Coupon Adjustment option, which fee will be calculated by PIM in accordance with its standard practices as of the date hereof (the “**One-Time Fee**”). Matson Navigation may deliver only one Election Notice which shall be delivered on a Business Day, and once delivered, the Election Notice shall be irrevocable. On the Business Day PIM receives the Election Notice (if PIM receives the Election Notice on or before 10:00 a.m. on such day), or on the Business Day immediately following the day on which PIM receives the Election Notice (if PIM receives the Election Notice after 10:00 a.m. on a Business Day or at any time on a day other than a Business Day), or on June 22, 2012 (if PIM has not received an Election Notice by 10:00 a.m. on such date), as applicable, PIM will calculate, as promptly as practicable after 10:00 a.m., the Coupon Adjustment or One-Time Fee, as applicable, and will deliver written notice of the Coupon Adjustment or One-Time Fee, as applicable, to Matson Navigation at 555 12th Street, 8th Floor, Oakland, CA 94067, together with an email copy of such notice to be delivered to the treasurer of Matson Navigation.

**2B. Purchase and Sale of Series C Notes.** The Company hereby agrees: (i) to sell to each Series C-1 Note Purchaser and, subject to the terms and conditions herein set forth, each Series C-1 Note Purchaser agrees to purchase from the Company the aggregate principal amount of Series C-1 Notes set forth opposite such Purchaser’s name in the Purchaser Schedules attached hereto at 100% of such aggregate principal amount; (ii) to sell to each Series C-2 Note Purchaser and, subject to the terms and conditions herein set forth, each Series C-2 Note Purchaser agrees to purchase from the Company the aggregate principal amount of Series C-2 Notes set forth opposite such Purchaser’s name in the Purchaser Schedules attached hereto at 100% of such aggregate principal amount and (iii) to sell to each Series C-3 Note Purchaser and, subject to the terms and conditions herein set forth, each Series C-3 Note Purchaser agrees to purchase from the Company the aggregate principal amount of Series C-3 Notes set forth opposite such Purchaser’s name in the Purchaser Schedules attached hereto at 100% of such aggregate principal amount. At the Closing the Company will deliver to each Series C Note Purchaser, at the offices of Bingham McCutchen LLP at Three Embarcadero Center, San Francisco, CA 94111, one or more Series C-1 Notes, one or more Series C-2 Notes or one or more Series C-3 Notes, as applicable, registered in such Purchaser’s name (or, if specified in the Purchaser Schedule, in the name of the nominee(s) for such Purchaser specified in the Purchaser Schedule), evidencing the aggregate principal amount of Series C-1 Notes, Series C-2 Notes or Series C-3 Notes to be purchased by such Purchaser and in the denomination or denominations specified with respect to such Purchaser in the Purchaser Schedule against payment of the purchase price thereof by transfer of immediately available funds on the date of the Closing, which is expected to be June 29, 2012 (herein called the “**Closing Date**”), for credit to the account or accounts as shall be specified in a letter on the Company’s letterhead, in substantially the form of Exhibit B attached hereto, from the Company to the Series C-1 Purchasers, the Series C-2 Purchasers and the Series C-3 Purchasers delivered prior to the Closing Date.

**2C. Release of Collateral.** (i) Effective concurrent with the Closing, the Collateral Agent hereby releases the Mortgage (as defined in the Prior Agreement) and all other security interests and other Liens in, to and on the Collateral (as defined in the Prior Agreement), including on the Manulani, and any reference to the Collateral or the Collateral Documents in the Series B Notes will be deemed to be deleted concurrent with the Closing and (ii) each of the undersigned hereby agrees that, concurrent with the Closing, each of the Collateral Documents and the Intercreditor Agreement (as such terms are defined in the Prior Agreement) is terminated. The Collateral Agent agrees (i) within one Business Day after the Closing, and at the sole expense of the Company, to deliver the executed Mortgage release documents to the Company or Gibson, Dunn & Crutcher LLP (pursuant to written directions provided to the Collateral Agent on or prior to the day immediately preceding the Closing) and (ii) promptly after the Closing, and at the sole expense of the Company, to deliver all such other documents, effect such recordations and filings and do such other acts as are reasonably necessary to effect such release (and the Collateral Agent hereby authorizes Matson Navigation, after the Closing, to file such UCC terminations with respect to the Liens previously created pursuant to the Collateral Documents).

**3. CONDITIONS OF CLOSING.** Each of (i) the effectiveness of this Agreement (other than paragraph 2A, which shall be effective upon the execution and delivery of this Agreement) and the amendment and restatement of the Prior Agreement effected hereby, and (ii) the obligation of each Series C Note Purchaser to purchase and pay for the Series C Notes to be purchased by such Purchaser is subject to the satisfaction, on or before August 19, 2012, of the following conditions:

**3A. Certain Documents.** Each Purchaser shall have received the following, each dated the Closing Date (unless otherwise specified):

- (i) the Series C Notes to be purchased by such Purchaser (if such Purchaser is a Series C Note Purchaser);
- (ii) the Company Assignment and Assumption, dated as of a date on or prior to the Closing Date, and executed by each of the Company and Matson Navigation;

(iii) the Multiparty Guaranty, made by Matson Navigation and any other Subsidiaries of the Company which are guarantors under the Bank Credit Agreement as of the Closing Date in favor of the holders of the Notes and in the form of Exhibit C-1 (as amended, restated, supplemented or otherwise modified from time to time, the “**Multiparty Guaranty**”);

(iv) the Indemnity and Contribution Agreement, by and among the Credit Parties and in the form of Exhibit C-2 (as amended, restated, supplemented or otherwise modified from time to time, the “**Indemnity and Contribution Agreement**”);

(v) a copy of the Separation Agreement, any amendments or supplements thereto and all other material agreements entered into in connection therewith, each certified by a Responsible Officer of the Company as true and complete copies thereof, which documents shall be reasonably satisfactory to such Purchaser;

(vi) a favorable opinion of Gibson, Dunn & Crutcher LLP, special counsel to the Credit Parties, and Cades Schutte LLP, special counsel to the Credit Parties, in form and substance satisfactory to such Purchaser (each of the Company and Matson Navigation hereby directs such counsel to deliver such opinion, agrees that the issuance and sale of the Series C Notes will constitute a reconfirmation of such direction, and understands and agrees that each Purchaser receiving such an opinion will and is hereby authorized to rely on such opinion);

(vii) a favorable opinion of Bingham McCutchen LLP, special counsel to the Purchasers, satisfactory to such Purchaser as to such matters incident to the matters herein contemplated as it may reasonably request;

(viii) certified copies of the resolutions of the Board of Directors of each Credit Party authorizing the execution and delivery of the Transaction Documents to which such Person is a party (including, in the case of the Company, the issuance, execution and delivery of the Series C Notes), and of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to this Agreement, the Notes and the other Transaction Documents;

(ix) a certificate of the Secretary or an Assistant Secretary and one other officer of each Credit Party certifying the names and true signatures of the officers of such Person authorized to sign the Transaction Documents to which such Person is a party and the other documents to be delivered hereunder;

(x) certified copies of the articles of incorporation and bylaws (or similar constitutive documents) of each Credit Party;

(xi) a good standing certificate for each Credit Party from the secretary of state of its formation (and, in the case of Matson Navigation, the State of California), in each case dated as of a recent date and such other evidence of the status of each Credit Party as such Purchaser may reasonably request; and

(xii) additional documents or certificates with respect to legal matters or corporate or other proceedings related to the transactions contemplated hereby as may be reasonably requested by such Purchaser.

**3B. Representations and Warranties; No Default.** The representations and warranties of each Credit Party contained in paragraph 1B and paragraph 8 hereof and in each other Transaction Document shall be true on and as of the Closing Date; there shall exist on the Closing Date no Event of Default or Default; and each Credit Party shall have delivered to each Purchaser an Officer’s Certificate, dated the Closing Date, to such effects.

**3C. Purchase Permitted by Applicable Laws.** The purchase of and payment for the Series C Notes to be purchased by each Series C Note Purchaser on the terms and conditions herein provided (including the use of the proceeds of such Series C Notes by the Company) shall not violate any applicable law or governmental regulation (including, without limitation, Section 5 of the Securities Act or Regulation T, U or X of the Board of Governors of the Federal Reserve System) and shall not subject such Purchaser to any tax, penalty, liability or other onerous condition under or pursuant to any applicable law or governmental regulation, and such Purchaser shall have received such certificates or other evidence as it may request to establish compliance with this condition. This paragraph 3C is a closing condition and shall not be construed as a tax indemnity.

**3D. Material Adverse Change.** No material adverse change in the business, condition (financial or otherwise), operations or prospects of Matson Navigation and its Subsidiaries, taken as a whole, since December 31, 2011 shall have occurred; it being understood and agreed that none of the incurrence of up to \$170,000,000 of incremental net indebtedness (after giving effect to the repayment of bank indebtedness with all or a portion of the proceeds of the Series C Notes), the Reorganization, the A&B Capital Contribution or the Spin-Off, individually or collectively, shall be deemed to constitute a material adverse change.

**3E. Reorganization Transactions.** Each Purchaser shall have received satisfactory evidence: (a) that each of the Merger, the Conversion, the Distribution, the Contribution and the Spin-Off has occurred as set forth in paragraph 1B; and (b) that all internal, shareholder, bank facility, regulatory and third-party approvals and consents in connection with the Reorganization and Spin-Off have been obtained (and each Purchaser shall have received an Officer’s Certificate, dated the Closing Date, to such effect).

**3F. Bank Credit Agreement.** The Bank Credit Agreement (as defined in the Prior Agreement) shall have been terminated and all obligations thereunder repaid in full, and the Company shall have entered into the Bank Credit Agreement (as defined herein) with an aggregate commitment of \$375,000,000 and other terms and conditions satisfactory to such Purchaser (including parity of the covenants and events of default in this Agreement as of the Closing with respect to the covenants and events of default in the Bank Credit Agreement (as defined herein) as of the Closing), a copy of which (with all exhibits and schedules thereto) having been delivered to the Purchasers and certified by a Responsible Officer as of the Closing Date as being a true and complete copy thereof.

**3G. Fees and Expenses.** Without limiting the provisions of paragraph 11B hereof, the Company or Matson Navigation shall have paid: (i) to the holders of the Series B Notes their ratable share of (a) an amendment fee in the aggregate amount equal to 5 basis points multiplied by the outstanding principal amount of the Series B Notes at the time of the Closing, and (b) the One-Time Fee (if applicable pursuant to paragraph 2A); and (ii) the reasonable and documented fees, charges and disbursements of special counsel to the Purchasers to the extent invoiced by no later than one (1) day prior to the Closing Date.

**4. PREPAYMENTS.** The Notes shall be subject to required prepayment as and to the extent provided in paragraph 4A. The Notes shall also be subject to prepayment under the circumstances set forth in paragraph 4B. Any prepayment made by the Company pursuant to any other provision of this paragraph 4 shall not reduce or otherwise affect its obligation to make any required prepayment as specified in paragraph 4A.

**4A. Required Prepayments of Notes.**

**4A(1). Series B Notes.** Until the Series B Notes shall be paid in full, the Company shall apply to the prepayment thereof, without premium, the sum of \$3,500,000 on May 19 and November 19 in each of the years 2005 to 2019, inclusive, and such principal amounts of the Series B Notes, together with interest thereon to the prepayment dates, shall become due on such prepayment dates. The remaining outstanding principal amount of the Series B Notes, together with any accrued and unpaid interest thereon, shall become due on May 19, 2020, the maturity date of the Series B Notes.

**4A(2). Series C Notes.** (i) Until the Series C-1 Notes shall be paid in full, the Company shall apply to the prepayment thereof, without premium, the sum of \$4,558,823.53 on each June 29 and December 29, beginning on June 29, 2015 through and including December 29, 2022, and such principal amounts of the Series C-1 Notes, together with interest thereon to the prepayment dates, shall become due on such prepayment dates. The remaining outstanding principal amount of the Series C-1 Notes, together with any accrued and unpaid interest thereon, shall become due on June 29, 2023, the maturity date of the Series C-1 Notes.

(ii) Until the Series C-2 Notes shall be paid in full, the Company shall apply to the prepayment thereof, without premium, the sum of \$2,619,047.62 on each June 29 and December 29, beginning on June 29, 2017 through and including December 29, 2026, and such principal amounts of the Series C-2 Notes, together with interest thereon to the prepayment dates, shall become due on such prepayment dates. The remaining outstanding principal amount of the Series C-2 Notes, together with any accrued and unpaid interest thereon, shall become due on June 29, 2027, the maturity date of the Series C-2 Notes.

(iii) Until the Series C-3 Notes shall be paid in full, the Company shall apply to the prepayment thereof, without premium, the sum of \$1,209,677.42 on each June 29 and December 29, beginning on June 29, 2017 through and including December 29, 2031, and such principal amounts of the Series C-3 Notes, together with interest thereon to the prepayment dates, shall become due on such prepayment dates. The remaining outstanding principal amount of the Series C-3 Notes, together with any accrued and unpaid interest thereon, shall become due on June 29, 2032, the maturity date of the Series C-3 Notes.

**4B. Optional Prepayment With Yield-Maintenance Amount.** The Notes of each Series shall be subject to prepayment, in whole at any time or from time to time in part (in integral multiples of \$100,000 and in a minimum amount of \$1,000,000), at the option of the Company, at 100% of the principal amount so prepaid plus interest thereon to the prepayment date and the Yield-Maintenance Amount, if any, with respect to each such Note. Any partial prepayment of a Series of the Notes pursuant to this paragraph 4B shall be applied in satisfaction of required payments of principal in inverse order of their scheduled due dates.

**4C. Notice of Optional Prepayment.** The Company shall give the holder of each Note of a Series to be prepaid pursuant to paragraph 4B irrevocable written notice of such prepayment not less than five Business Days prior to the prepayment date, specifying such prepayment date, the aggregate principal amount of the Notes of such Series to be prepaid on such date, the principal amount of the Notes of such Series held by such holder to be prepaid on that date and that such prepayment is to be made pursuant to paragraph 4B. Notice of prepayment having been given as aforesaid, the principal amount of the Notes specified in such notice, together with interest thereon to the prepayment date and together with the Yield-Maintenance Amount, if any, herein provided, shall become due and payable on such prepayment date. The Company shall, on or before the day on which it gives written notice of any prepayment pursuant to paragraph 4B, give telephonic notice of the principal amount of the Notes to be prepaid and the prepayment date to each Significant Holder which shall have designated a recipient for such notices in the Purchaser Schedule attached hereto or by notice in writing to the Company. Notwithstanding the foregoing, any notice of prepayment of the Notes in whole given by the Company may state that such prepayment notice is conditioned upon the effectiveness of other credit facilities or capital raising, in which case such notice may be revoked by the Company (by notice to the holders on or prior to the specified effective date) if such condition is not satisfied.

**4D. Application of Prepayments.** In the case of each prepayment of less than the entire unpaid principal amount of all outstanding Notes of any Series pursuant to paragraph 4A or 4B, the amount to be prepaid shall be applied pro rata to all outstanding Notes of such Series (including, in the case of prepayments pursuant to paragraph 4A(1) or 4A(2) for the purpose of this paragraph 4D only, all Notes of such Series prepaid or otherwise retired or purchased or otherwise acquired by the Company or any of its Subsidiaries or any other Affiliates other than by prepayment pursuant to paragraph 4A or 4B) according to the respective unpaid principal amounts thereof.

**4E. Retirement of Notes.** The Company shall not, and shall not permit any of its Subsidiaries or any other Affiliates to, prepay or otherwise retire in whole or in part prior to their stated final maturity (other than by prepayment pursuant to paragraphs 4A or 4B, or upon acceleration of such final maturity pursuant to paragraph 7A), or purchase or otherwise acquire, directly or indirectly, Notes of any Series held by any holder unless the Company or such Subsidiary or Affiliate shall have offered to prepay or otherwise retire or purchase or otherwise acquire, as the case may be, the same proportion of the aggregate principal amount of Notes of such Series held by each other holder of Notes of such Series at the time outstanding upon the same terms and conditions. Any Notes so prepaid or otherwise retired or purchased or otherwise acquired by the Company or any of its Subsidiaries or other Affiliates shall not be deemed to be outstanding for any purpose under this Agreement, except as provided in paragraph 4D.

**5. AFFIRMATIVE COVENANTS.** On and after the Closing Date and so long as any Note or amount due hereunder or under any other Transaction Document (other than any contingent indemnification obligation) is outstanding or unpaid, the Company covenants as follows:

**5A. Financial Statements.** The Company covenants that it will deliver to each holder of the Notes:

(i) as soon as practicable and in any event within 60 days after the end of each quarterly period (other than the last quarterly period) in each fiscal year (or if earlier, 5 days after the date required to be filed with the SEC), consolidated statements of income and cash flows of the Company and its Subsidiaries for the period from the beginning of the current fiscal year to the end of such quarterly period, and a consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarterly period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year, all in reasonable detail and certified by an authorized financial officer of the Company, subject only to changes resulting from year-end adjustments;

(ii) as soon as practicable and in any event within 120 days after the end of each fiscal year (or if earlier, 5 days after the date required to be filed with the SEC), consolidated statements of income and cash flows of the Company and its Subsidiaries for such year and a consolidated balance sheet of the Company and its Subsidiaries as at the end of such year, setting forth in each case in comparative form corresponding figures from the preceding annual audit, certified by independent public accountants of recognized national standing whose opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit, provided that, so long as the Bank Credit Agreement shall have a similar provision, it shall not be a violation of this clause (ii) if the opinion accompanying the financial statements for the last fiscal year prior to the Maturity Date (as defined in the Bank Credit Agreement) is subject to a “going concern” or like qualification solely as a result of the impending maturity of the Loans (as defined in the Bank Credit Agreement);

(iii) promptly upon transmission thereof, copies of all such financial, proxy and information statements, notices and other reports as are sent to the Company’s public stockholders and copies of all registration statements (without exhibits) and all reports which are filed with the Securities and Exchange Commission (or any governmental body or agency succeeding to the functions of the Securities and Exchange Commission);

(iv) promptly upon receipt thereof, a copy of each other material report submitted to the Company or any of its Subsidiaries by independent accountants in connection with any material annual, interim or special audit made by them of the books of the Company or such Subsidiary;

(v) promptly after the furnishing thereof, copies of any certificate, statement or report furnished to any other lender to, or holder of the debt securities of, the Company pursuant to the terms of any indenture, loan, credit or similar agreement or instrument and not otherwise required to be furnished to the holders of the Notes pursuant to any other clause of this paragraph 5A; and

(vi) with reasonable promptness, such other financial data as any holder of Notes may reasonably request.

The documents required to be delivered by clauses (i), (ii) and (iii) above (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which the Company shall provide each holder of Notes (by electronic mail at such holder’s electronic mail address as set forth on the Purchaser Schedules or at such other electronic mail address as any such Purchaser shall have specified to the Company in writing) with an electronic link to such documents.

Together with each delivery of financial statements required by clauses (i) and (ii) above, the Company will deliver to each holder of Notes an Officers’ Certificate (a) demonstrating (with computations in reasonable detail) compliance with the covenants in paragraphs 6A(1), 6A(2), 6A(3), 6C(4) and 6C(6) (including with respect to each such covenant, where applicable, a reconciliation from GAAP, as reflected in the financial statements then being furnished, to the calculation of such financial covenants, after giving effect to any change in accounting for Capitalized Lease Obligations which has occurred after June 4, 2012), (b) listing each Material Subsidiary (and identifying whether or not such Material Subsidiary is a Domestic Material Subsidiary) as of the end of the applicable period to which the accompanying financial statements pertain and (c) stating that there exists no Default or Event of Default, or if any Default or Event of Default exists, specifying the nature and period of existence thereof and what action the Company proposes to take with respect thereto.

The Company also covenants that forthwith upon a Responsible Officer of the Company obtaining actual knowledge of an Event of Default or Default, it will deliver to each holder of Notes an Officers’ Certificate specifying the nature and period of existence thereof and what action the Company proposes to take with respect thereto.

**5B. Inspection of Property.** The Company covenants that it will permit any Person designated by any Significant Holder in writing, at such Significant Holder’s expense, to visit and inspect any of the properties of the Company and its Subsidiaries, to examine their books and financial records and to make copies thereof or extracts therefrom and to discuss their affairs, finances and accounts with the principal officers and the Company’s independent certified public accountants, all at such reasonable times and as often as such Significant Holder may reasonably request; provided that a principal financial officer of the Company shall have reasonable prior notice of, and may elect to be present during, discussions with the Company’s independent public accountants.

**5C. Information Required by Rule 144A.** The Company covenants that it will, upon the request of the holder of any Note, provide such holder, and any qualified institutional buyer designated by such holder, such financial and other information as such holder may reasonably determine to be necessary in order to permit compliance with the information requirements of Rule 144A under the Securities Act in connection with the resale of Notes, except at such times as the Company is subject to and in compliance with the reporting requirements of section 13 or 15(d) of the Exchange Act. For the purpose of this paragraph 5C, the term “**qualified institutional buyer**” shall have the meaning specified in Rule 144A under the Securities Act.

**5D. Maintenance of Properties; Insurance.** The Company covenants that it shall, and shall cause its Subsidiaries to (i) maintain or cause to be maintained in good repair, working order and condition all material properties used or useful at that time in its business and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof and (ii) maintain insurance with reputable and financially sound insurers in such amounts and against such liabilities and hazards as is customarily maintained by other companies operating similar businesses.

**5E. United States Citizen.** The Company covenants that it will, and will cause each of its Subsidiaries that owns or operates any Vessel, at all times to preserve and maintain its status as a Section 2 Citizen.

**5F. Environmental and Safety Laws.**

(a) The Company shall deliver promptly to each holder of any Notes notice of (i) any material enforcement, cleanup, removal or other material governmental or regulatory action instituted or, to the Company’s best knowledge, threatened against the Company or any Material Subsidiary pursuant to any Environmental and Safety Laws, (ii) all material Environmental Liabilities and Costs against or in respect of the Company or any Material Subsidiary or any of their respective material properties and (iii) the Company’s or any Material Subsidiary’s discovery of any occurrence or condition on any material real property adjoining or in the vicinity of any of its properties that the Company or such Material Subsidiary has reason to believe would cause such property or any material part thereof to be subject to any material restrictions on its ownership, occupancy, transferability or use under any Environmental and Safety Laws.

(b) The Company shall, and shall cause its Material Subsidiaries to, keep and maintain its properties and conduct its and their operations in compliance in all material respects with all applicable Environmental and Safety Laws except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

**5G. Equal and Ratable Liens.** If the Company or any of its Subsidiaries shall create, assume or otherwise incur any Lien upon any of its property or assets, whether now owned or hereafter acquired, other than Liens permitted by the provisions of paragraph 6C(1) (including in such permitted Liens, without limitation, Liens securing Title XI Debt to the extent such Title XI Debt is permitted Priority Debt), then the Company will make, or will cause its Subsidiaries to make, effective provision whereby the obligations evidenced by the Notes and under the other Transaction Documents will be secured by such Liens equally and ratably with any and all other Debt thereby secured so long as any such other Debt shall be so secured pursuant to an agreement or agreements (including security agreements and similar collateral documents and an intercreditor agreement) reasonably acceptable to the Required Holders.

**5H. Subsequent Guarantors; Release of Guarantors.** (a) The Company covenants that, upon the earlier of (i) within 30 days after any Subsidiary becoming a Material Domestic Subsidiary (based on the most recent financial statements delivered to the holders of the Notes pursuant to paragraphs 5A(i) or (ii)) (or such longer period as determined by Required Holders in their sole discretion) if such Subsidiary is not a Guarantor at such time, and (ii) concurrently with such time as any Person becomes a guarantor or other obligor under the Bank Credit Agreement, the Company shall cause such Person to (i) become a party to each of the Multiparty Guaranty and the Indemnity and Contribution Agreement by executing and delivering to the holders of the Notes a joinder or counterpart to the Multiparty Guaranty and the Indemnity and Contribution Agreement, and (ii) deliver to the holders of the Notes such organization documents, resolutions and favorable opinions of counsel, all in form, content and scope similar to those delivered on the Closing Date or otherwise reasonably satisfactory to the Required Holders.

(b) If (i) any Guarantor ceases to be a Material Domestic Subsidiary (based on the most recent financial statements delivered to the holders of the Notes pursuant to paragraphs 5A(i) or (ii)), or (ii) if any Person which has become a Guarantor by virtue of clause (ii) of paragraph 5H(a) (and which is not at the applicable time of determination a Material Domestic Subsidiary (based on the most recent financial statements delivered to the holders of the Notes pursuant to paragraphs 5A(i) or (ii)) ceases to be required to be a guarantor or other obligor of the credit facilities under the Bank Credit Agreement, and if, in the case of either of the immediately preceding clause (i) or (ii), after giving effect to the release of such Guarantor of its obligations under the Multiparty Guaranty, no Default or Event of Default would exist, then the Company may deliver to each holder of Notes a certificate of a Responsible Officer as to the foregoing requirements and, upon the later of (x) such delivery and (y) concurrently with such time as that Guarantor has been released from all of its obligations as a guarantor or other obligor of the credit facilities under the Bank Credit Agreement, that Guarantor shall be automatically released from all of its obligations under the Multiparty Guaranty and the Indemnity and Contribution Agreement, without further approval or action by any holder of Notes; provided that if any consideration is given to any party to the Bank Credit Agreement for such release of such Guarantor, then the holders of the Notes shall be paid an amount equal to their ratable share of such consideration concurrently therewith.

**6. NEGATIVE COVENANTS.** On and after the Closing Date and so long as any Note or amount due hereunder or under any other Transaction Document (other than any contingent indemnification obligation) is outstanding or unpaid, the Company covenants as follows:

**6A. Financial Covenants.** The Company will not permit:

**6A(1). Consolidated Interest Coverage Ratio.** The Consolidated Interest Coverage Ratio as of the end of any fiscal quarter of the Company to be less than 3.50 to 1.00;

**6A(2). Consolidated Leverage Ratio.** The ratio (the “**Consolidated Leverage Ratio**”) of (a) all Debt of the Company and Subsidiaries on a consolidated basis at any time to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters then or most recently ended to exceed 3.25 to 1.00; provided, however, that: (i) in connection with any Acquisition that is not a Hostile Acquisition and that is in an Eligible Business Line for which the aggregate purchase consideration equals or exceeds \$75,000,000, the maximum permitted Consolidated Leverage Ratio, at the election of the Company, with prior written notice from the Company to the holders of the Notes, shall increase to 3.90 to 1.00, on one occasion during the term of this Agreement, for the period beginning on the date of the consummation of such Acquisition and continuing until the fourth consecutive fiscal quarter end which occurs on or after the date of the consummation of such Acquisition, provided that the coupon (including the applicable default rate) for each Series of the Notes shall automatically, without further consent or other action of any Person, be deemed to be increased by 0.45% per annum during such period (and shall automatically, without further consent or other action of any Person, be deemed to return to the original coupon (including the applicable default rate) after the end of such period); and (ii) in connection with any purchase or construction of a new container ship for which the aggregate purchase consideration or construction cost equals or exceeds \$125,000,000, the maximum permitted Consolidated Leverage Ratio, at the election of the Company, with prior written notice from the Company to the holders of the Notes delivered by the Company prior to the Specified Date (as defined below) and specifying therein such Specified Date, shall increase to 3.50 to 1.00, on one occasion during the term of this Agreement, for the period beginning on a date determined by the Company between the commencement of payment for such container ship and delivery of such container ship (the “**Specified Date**”) and continuing until the fourth consecutive fiscal quarter end which occurs on or after the Specified Date, provided that the coupon (including the applicable default rate) for each Series of the Notes shall automatically, without further consent or other action of any Person, be deemed to be increased by 0.20% per annum during such period (and shall automatically, without further consent or other action of any Person, be deemed to return to the original coupon (including the applicable default rate) after the end of such period);

**6A(3). Priority Debt.** The Company shall not permit: (i) the principal amount of Priority Debt at any time to exceed 20% of Consolidated Tangible Assets as of the most recently ended fiscal quarter with respect to which financial statements have been delivered pursuant to the requirements of paragraphs 5A(i) or (ii); provided, that such maximum permitted percentage amount of Priority Debt shall be reduced to 17.5% upon the earlier to occur of (a) such time, if any, as the Company or any of its Subsidiaries acquires two new vessels for which the aggregate purchase consideration for each vessel exceeds \$100,000,000 and (b) December 31, 2017; and (ii) the principal amount of Priority Debt that is not Title XI Priority Debt at any time to exceed 10% of Consolidated Tangible Assets as of the most recently ended fiscal quarter with respect to which financial statements have been delivered pursuant to the requirements of paragraphs 5A(i) or (ii).

Notwithstanding anything to the contrary in paragraph 6A (or the defined terms used therein), for any period which is relevant to the calculation of any financial covenant in paragraph 6A, to the extent such period is prior to the consummation of the Spin-Off, the relevant operating statement (i.e., income statement or statement of cash flows) categories shall be deemed to be for Matson Navigation and its Subsidiaries (rather than for the Company and its Subsidiaries).

**6B. Dividend and Investment Limitation.** The Company covenants that it will not pay or declare any dividend on any class of stock or make any other distribution on account of any class of its stock, or redeem, purchase or otherwise acquire, directly or indirectly, any shares of its stock (all of the foregoing being herein called “**Restricted Payments**”) if at the time any proposed Restricted Payment is to be made, or after giving effect to any proposed Restricted Payment, a Default or an Event of Default exists or would exist. Notwithstanding the foregoing, the Company may make the A&B Capital Contribution and the Spin-Off may be consummated.

**6C. Lien and Other Restrictions.** The Company covenants that it will not and will not permit any Subsidiary to:

**6C(1). Liens.** Create, assume or suffer to exist any Lien upon any of its property or assets, whether now owned or hereafter acquired (whether or not provision is made for the equal and ratable securing of the obligations evidenced by the Notes and under the other Transaction Documents in accordance with the provisions of paragraph 5G), except

- (i) Liens for taxes not yet delinquent or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established to the extent required by GAAP,
- (ii) Liens (other than Liens pursuant to ERISA) incidental to the conduct of its business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances or credit (including, without limitation, Liens on vessels or equipment (a) for crew and stevedores wages, (b) for salvage and general average, (c) arising by operation of law in the ordinary course of business in operating, maintaining or repairing vessels, and (d) for damages arising from maritime torts which are unclaimed, or which are claimed and are covered by insurance and any deductible applicable thereto), and which do not in the aggregate materially detract from the value of its property or assets or materially impair the use thereof in the operation of its business,
- (iii) Liens on property or assets of a Subsidiary securing obligations of such Subsidiary to the Company or another Subsidiary,
- (iv) Liens encumbering the CCF to the extent incurred to secure the financing by the Company or Matson Navigation of “qualified vessels” as defined in Section 607 of the Merchant Marine Act, 1936, as amended,
- (v) Liens existing on the Closing Date and listed on Schedule 6C(1), and any renewals or extensions thereof, provided that the property covered thereby is not changed and the principal amount of any indebtedness secured thereby is not increased,
- (vi) Liens in cash collateral securing contingent reimbursement obligations under standby letters of credit issued pursuant to the Bank Credit Agreement (but excluding any such Liens required pursuant to Section 8.02(c) of the Bank Credit Agreement, as such section is in effect on the date hereof), provided that (a) no Event of Default or Event of Default (as defined in the Bank Credit Agreement) exists, (b) the aggregate amount of all such cash collateral does not at any time exceed \$15,000,000, and (c) such cash collateral does not secure such standby letters of credit for more than 60 consecutive days,
- (vii) other Liens securing Debt and other obligations not otherwise permitted by clauses (i) through (vi) above, inclusive; provided that the aggregate amount of all Priority Debt does not, at any time, exceed the level prohibited by paragraph 6A(3), provided further that, notwithstanding the foregoing, the Company shall not, and shall not permit any Subsidiary to, create or permit to exist any Lien on any property securing Debt or letters of credit (to the extent any letters of credit otherwise would not constitute Debt pursuant to the definition of such term) outstanding or issued under the Bank Credit Agreement (other than Liens permitted pursuant to clause (vi) of this paragraph 6C(1)) unless and until the Notes shall be secured equally and ratably with such Debt and letters of credit pursuant to an agreement or agreements (including security agreements and similar collateral documents and an intercreditor agreement) reasonably acceptable to the Required Holders, provided further still that, notwithstanding anything to the contrary in the immediately preceding proviso, (1) any cash which otherwise would secure both the Notes and contingent reimbursement obligations under letters of credit issued pursuant to the Bank Credit Agreement may, at the option of the Company, separately secure the Notes and the contingent reimbursement obligations under letters of credit issued pursuant to the Bank Credit Agreement so long as the amount of cash which separately secures the Notes at all times equals the amount of cash securing the contingent reimbursement obligations under letters of credit issued under the Bank Credit Agreement and (2) the amount of any cash securing the Notes at any time pursuant to the immediately preceding clause (1) shall not be required to exceed the principal amount of the Notes outstanding at such time,
- (viii) (a) other Liens securing obligations that do not constitute Debt, provided that the aggregate amount of such obligations does not exceed \$10,000,000 at any time and (b) other Liens securing obligations that do not constitute Debt provided that the aggregate fair market value (as reasonably determined by the Company acting in good faith) of all assets subject to such Lien does not exceed \$10,000,000, and
- (ix) any Lien securing obligations that do not constitute Debt existing on any property of any Person at the time it becomes a Subsidiary, or existing prior to the time of acquisition upon any property acquired by the Company or any Subsidiary through purchase, merger or consolidation or otherwise, whether or not assumed by the Company or such Subsidiary; provided that any such Lien shall not encumber any other property of the Company or such Subsidiary (other than proceeds of such acquired property);

**6C(2). Sole Borrower Under Bank Credit Agreement.** Modify the Bank Credit Agreement in any manner that would result in any Person other than the Company being a borrower thereunder;

**6C(3). Merger.** Enter into any transaction of merger, consolidation or other combination with any other Person; provided that

- (i) any Subsidiary may merge with the Company; provided that the Company shall be the continuing or surviving corporation and immediately after such merger no Event of Default shall exist,
- (ii) any Subsidiary may merge with another Subsidiary; provided that if a Material Domestic Subsidiary merges with a Foreign Subsidiary, such Material Domestic Subsidiary shall be the surviving Person and immediately after such merger no Event of Default shall exist, and
- (iii) the Company or any Subsidiary may merge, consolidate or combine with any other Person in connection with an Acquisition permitted by paragraph 6C(6)(ii); provided that (a) immediately after such merger, consolidation or combination, no Event of Default



shall exist and (b) if the Company is a party to such transaction, the Company will be the continuing or surviving corporation;

**6C(4). Sale of Capital Assets.** Sell, lease or transfer or otherwise dispose of any Capital Asset to any Person, except that during any rolling twelve-month period, the Company or any Subsidiary may sell or otherwise dispose of Capital Assets which constituted up to 10% of the total value of the consolidated assets of Matson Navigation and its Subsidiaries as of December 31, 2011, so long as (A) such Capital Assets sold contributed less than 25% of the Consolidated Net Income of the Company (or, for periods prior to the consummation of the Spin-Off, Matson Navigation) in each of the three fiscal years immediately preceding any such sale and (B) such Capital Assets, when considered together with all other Capital Assets sold or otherwise disposed of subsequent to December 31, 2011, do not constitute in excess of 30% of the total value of the consolidated assets of Matson Navigation and its Subsidiaries as of December 31, 2011, provided that this covenant shall not apply to any transfer required by the Separation Agreement;

**6C(5). Transactions with Affiliates and Stockholders.** Directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise deal with, in the ordinary course of business or otherwise (i) any Affiliate (excluding directors and officers in their capacity as such), (ii) any Person owning, beneficially or of record, directly or indirectly, either individually or together with all other Persons to whom such Person is related by blood, adoption or marriage, stock of the Company or stock of any Person owning stock of the Company (of any class having ordinary voting power for the election of directors) aggregating 5% or more of such voting power or (iii) any Person related by blood, adoption or marriage to any Person described or coming within the provisions of clause (i) or (ii) of this paragraph 6C(5); provided that the following shall be permitted: (a) such transactions on terms no less favorable to the Company or any Subsidiary than if no such relationship existed, (b) the sale or issuance by the Company of its capital stock, (c) the Reorganization and the Spin-Off, (d) transactions between the Company and any Subsidiary, and between or among Subsidiaries of the Company and (e) Restricted Payments made in compliance with paragraph 6B; or

**6C(6). Loans, Advances and Investments.** Make or permit to remain outstanding any loan or advance to, or own, purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any Person, or consummate any Acquisition, except that the Company or any Subsidiary may

(i) make or permit to remain outstanding loans or advances to the Company or any Subsidiary,

(ii) own, purchase or acquire stock, obligations or securities of a Subsidiary and, so long as the Company is in compliance with the financial covenants set forth in paragraph 6A on a pro-forma basis immediately after giving effect to such transaction, consummate Acquisitions,

(iii) acquire and own stock, obligations, securities or other investments (a) consisting of extensions of credit arising from the grant of trade credit, or received in settlement or partial settlement thereof of obligations (including any Debt or trade credit) owing to the Company or any Subsidiary or (b) received in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of trade creditors or account debtors,

(iv) make investments in accordance with the resolutions of the Board of Directors of the Company; provided that such resolutions authorize only investments rated investment grade by S&P, Moody's, or any other nationally recognized credit rating agency or investments in the Company's accounts receivable purchased or held by the CCF,

(v) make the A&B Capital Contribution,

(vi) make any investment in any stock, obligations or securities of, or any other interest in, or any capital contribution to, an Eligible Business Line (subject in the case of any Acquisition, to paragraph 6C(6)(ii)), and

(vii) make other investments, loans and advances which in the aggregate (at original cost) do not exceed \$30,000,000 at any time outstanding;

notwithstanding the foregoing, (a) amounts in the CCF may be invested only as provided in clause (iv) above, and (b) for the avoidance of doubt, this paragraph 6C(6) shall not apply to any Guarantee.

**6D. Terrorism Sanctions Regulations.** The Company covenants that it will not and will not permit any Affiliated Entity to (i) become an OFAC Listed Person or (ii) have any investments in, or knowingly engage in any dealings or transactions with, any Blocked Person.

## 7. EVENTS OF DEFAULT.

**7A. Acceleration.** If any of the following events shall occur and be continuing for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or otherwise):

(i) the Company defaults in the payment of (i) any principal of, or Yield-Maintenance Amount in respect of, any Note, or (ii) any interest on any Note for more than five days after the same shall become due, in either case either by the terms thereof or otherwise as herein provided; or

(ii) (a) an Event of Default (as defined in the Bank Credit Agreement) has occurred and is continuing under the Bank Credit Agreement, or (b) the Company or any Material Subsidiary defaults in any payment of principal of, or premium or interest on, any Debt (other than the Notes) beyond any period of grace provided with respect thereto, or the Company or any Material Subsidiary fails to perform or observe any other agreement, term or condition contained in any agreement relating to any such Debt (or any other event under any such agreement occurs and is continuing) and the effect of such default, failure or other event is to cause, or permit the holder or holders of such Debt (or a trustee on behalf of such holder or holders) to cause, such Debt to become due (or to be required to be repurchased by the Company or any Material Subsidiary) prior to any stated maturity; provided that the aggregate amount of all Debt as to which such a payment default shall occur or such a failure or other event causing or permitting acceleration (or resale to a Company or any Material Subsidiary) shall occur and be continuing exceeds \$15,000,000; or

(iii) any representation or warranty made by Matson Navigation in the Prior Agreement, or by any Credit Party herein or in any other Transaction Document or by any Credit Party or any of its officers in any writing furnished in connection with or pursuant to this Agreement or

any other Transaction Document shall be false or misleading in any material respect on the date as of which made; or

(iv) the Company fails to perform or observe any agreement contained in paragraph 5H or paragraph 6 hereof; or

(v) any Credit Party fails to perform or observe any other agreement, term or condition (not specified in clauses (i) or (iv) of this paragraph 7A) contained in any Transaction Document on its part to be performed or observed and such failure shall not be remedied within 30 days after any Responsible Officer obtains actual knowledge thereof; or

(vi) any Credit Party or any Material Subsidiary makes an assignment for the benefit of creditors or is generally not paying its debts as such debts become due; or

(vii) any decree or order for relief in respect of any Credit Party or any Material Subsidiary is entered under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution, liquidation or similar debtor relief law, whether now or hereafter in effect (herein called the “**Bankruptcy Law**”), of the United States or another applicable jurisdiction; or

(viii) any Credit Party or any Material Subsidiary petitions or applies to any tribunal for, or consents to, the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official of any such Credit Party or any such Material Subsidiary, or of any substantial part of the assets of any such Credit Party or any such Material Subsidiary, or commences a voluntary case under the Bankruptcy Law of the United States or any proceedings (other than proceedings for the voluntary liquidation and dissolution of a Material Subsidiary) relating to any Credit Party or any Material Subsidiary under the Bankruptcy Law of any other jurisdiction; or

(ix) any petition or application of the type described in clause (viii) of this paragraph 7A is filed, or any such proceedings are commenced, against any Credit Party or any Material Subsidiary and such Credit Party or such Material Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein, or an order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings, and such order, judgment or decree remains unstayed and in effect for more than 30 days; or

(x) any order, judgment or decree is entered in any proceedings against any Credit Party decreeing the dissolution of such Credit Party and such order, judgment or decree remains unstayed and in effect for more than 30 days; or

(xi) (a) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (b) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBCG or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of such proceedings, (c) the aggregate amount under all Plans of the fair market value of the assets (within the meaning of section 303 of ERISA) is less than 70% of the “**Funding Target**” (within the meaning of section 303 of ERISA), (d) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (e) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (f) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder; and any such event or events described in clauses (a) through (f) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect; or

(xii) any judgment(s) or decree(s) in the aggregate amount of \$25,000,000 or more shall be entered against the Company or any of its Material Subsidiaries that are not paid or fully covered (beyond any applicable deductibles) by insurance and such judgment(s) or decree(s) shall not have been vacated, discharged or stayed or bonded pending appeal within 60 days from the entry thereof; or

(xiii) any Transaction Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the obligations evidenced by the Notes and under the other Transaction Documents, ceases to be in full force and effect; or any Credit Party or any other Person contests in any manner the validity or enforceability of any Transaction Document; or any Credit Party denies that it has any or further liability or obligation under any Transaction Document, or purports to revoke, terminate or rescind any Transaction Document; or

(xiv) there occurs any Change of Control;

then (a) if such event is an Event of Default specified in clause (vii), (viii) or (ix) of this paragraph 7A with respect to the Company or Matson Navigation, all of the Notes at the time outstanding shall automatically become immediately due and payable together with interest accrued thereon and the Yield-Maintenance Amount with respect thereto, without presentment, demand, protest or notice of any kind, all of which are hereby waived by the Company and Matson Navigation, and (b) with respect to any event constituting an Event of Default, the Required Holder(s) of any Series of Notes may at its or their option, by notice in writing to the Company, declare all of the Notes of such Series to be, and all of the Notes of such Series shall thereupon be and become, immediately due and payable together with interest accrued thereon and together with the Yield-Maintenance Amount, if any, with respect to each Note of such Series, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Company.

**7B. Rescission of Acceleration.** At any time after any or all of the Notes of a Series shall have been declared immediately due and payable pursuant to paragraph 7A, the Required Holder(s) of such Series may, by notice in writing to the Company, rescind and annul such declaration and its consequences if (i) the Company shall have paid all overdue interest on the Notes of such Series, the principal of and Yield-Maintenance Amount, if any, payable with respect to any Notes of such Series which have become due otherwise than by reason of such declaration, and interest on such overdue interest and overdue principal and Yield-Maintenance Amount at the rate specified in the Notes of such Series, (ii) the Company shall not have paid any amounts which have become due solely by reason of such declaration, (iii) all Events of Default and Defaults, other than non-payment of amounts which have become due solely by reason of such declaration, shall have been cured or waived pursuant to paragraph 11C, and (iv) no judgment or decree shall have been entered for the payment of any amounts due pursuant to the Notes of such Series or this Agreement (as this Agreement pertains to the Notes of such Series). No such rescission or annulment shall extend to or affect any subsequent Event of Default or Default or impair any right arising therefrom.

**7C. Notice of Acceleration or Rescission.** Whenever any Note shall be declared immediately due and payable pursuant to paragraph 7A or any such declaration shall be rescinded and annulled pursuant to paragraph 7B, the Company shall forthwith give written notice thereof to the holder of each Note at the time outstanding.

**7D. Other Remedies.** If any Event of Default or Default shall occur and be continuing, the holder of any Note may proceed to protect and enforce its rights under this Agreement, the other Transaction Documents and such Note by exercising such remedies as are available to such holder in respect thereof under applicable law, either by suit in equity or by action at law, or both, whether for specific performance of any covenant or other agreement contained in this Agreement or any other Transaction Document or in aid of the exercise of any power granted in this Agreement or any other Transaction Document. No remedy conferred in this Agreement or any other Transaction Document upon the holder of any Note is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy conferred herein or now or hereafter existing at law or in equity or by statute or otherwise.

**8. REPRESENTATIONS, COVENANTS AND WARRANTIES.** The Company represents, covenants and warrants as follows, immediately before and immediately after giving effect to the consummation of the Closing:

**8A. Organization.** The Company and each Material Subsidiary is duly organized, validly existing and in good standing under the laws of the state of its organization. The Company and each Material Subsidiary has the full power and authority to own its properties and to carry on its business as now being conducted. Each Credit Party has full power, authority and right to execute and deliver, and to perform and observe, the provisions of the Transaction Documents to which it is a party and to carry out the transactions contemplated by such Transaction Documents. The execution, delivery and performance of the Transaction Documents to which any Credit Party is a party have been duly authorized by all necessary corporate and other action, and, when duly executed and delivered, will be the legal, valid and binding obligations of such Credit Party, enforceable against it in accordance with their respective terms. Set forth on Schedule 8A is a list as of the Closing Date of each Material Subsidiary, together with information identifying each Material Domestic Subsidiary as of the Closing Day.

**8B. Financial Statements.** Matson Navigation has furnished each Purchaser with the following financial statements, identified by a principal financial officer of Matson Navigation: (i) consolidated balance sheets of Matson Navigation and its Subsidiaries as of: December 31, 2011, December 31, 2010, and December 31, 2009, and consolidated statements of income, shareholders' equity and cash flows of Matson Navigation and its Subsidiaries for each such year, certified by Deloitte & Touche; and (ii) consolidated balance sheets of Matson Navigation and its Subsidiaries as of March 31, 2012 and March 31, 2011 and consolidated statements of income, stockholders' equity and cash flows of Matson Navigation and its Subsidiaries for the three-month period ended on each such date, in each case prepared by Matson Navigation. Such financial statements (including any related schedules and/or notes) are true and correct in all material respects (subject, as to interim statements, to changes resulting from audits and year-end adjustments), have been prepared in accordance with GAAP consistently applied throughout the periods involved and show all liabilities, direct and contingent, of Matson Navigation and its Subsidiaries required to be shown in accordance with such principles. The balance sheets fairly present the condition of Matson Navigation and its Subsidiaries as at the dates thereof, and the statements of income, shareholders' equity and cash flows fairly present the results of the operations and cash flows of Matson Navigation and its Subsidiaries for the periods indicated. As of the Closing Date, no material adverse change in the business, condition (financial or otherwise) operations or prospects of Matson Navigation and its Subsidiaries, taken as a whole, has occurred since December 31, 2011; it being understood and agreed that none of the incurrence of up to \$170,000,000 of incremental net indebtedness (after giving effect to the repayment of bank indebtedness with all or a portion of the proceeds of the Series C Notes), the Reorganization, the A&B Capital Contribution and the Spin-Off, individually or collectively shall be deemed to constitute a material adverse change.

**8C. Actions Pending.** There is no action, suit, investigation or proceeding pending or, to the knowledge of the Company, threatened against the Company or any Subsidiary or any properties or rights of the Company or any Subsidiary, by or before any court, arbitrator or administrative or governmental body which could reasonably be expected to result in any Material Adverse Effect.

**8D. Outstanding Debt.** Neither the Company nor any Subsidiary has any Debt outstanding that is prohibited by paragraph 6A(2) or paragraph 6A(3). There exists no event of default under the provisions of any instrument evidencing any Debt of the Company or any Subsidiary or of any agreement relating thereto.

**8E. Title to Properties.** The Company has and each Subsidiary has good and indefeasible title to its respective real properties (other than properties which it leases) and good title to all of its other properties and assets, including the properties and assets reflected in the most recent audited balance sheet referred to in paragraph 8B (other than properties and assets disposed of in the ordinary course of business) except where the failure to have such good title would not reasonably be expected to have a Material Adverse Effect, subject to no Liens of any kind except Liens permitted by paragraph 6C(1). There is no material default, nor any event that, with notice or lapse of time or both, would constitute such a material default under any material lease to which either the Company or any Subsidiary is a lessee, lessor, sublessee or sublessor.

**8F. Taxes.** The Company has and each Material Subsidiary has filed all federal and state income tax and all other material tax and informational returns which are required to be filed by it. The Company and each such Subsidiary has paid all taxes as shown on its returns and on all assessments received to the extent that such taxes are not yet delinquent, except such taxes as are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP.

**8G. Conflicting Agreements and Other Matters.** Neither the execution nor delivery of this Agreement, the Notes or any other Transaction Document, nor the offering, issuance and sale of the Notes, nor fulfillment of nor compliance with the terms and provisions of this Agreement, the Notes or any other Transaction Document will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary pursuant to, their respective articles of incorporation or bylaws (or other comparable governing documents, as applicable), any award of any arbitrator or any agreement, instrument, order, judgment, decree, statute, law, rule or regulation to which the Company or any Subsidiary is subject. Neither the Company nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing any of their respective Debt, any agreement relating thereto or any other contract or agreement which restricts or otherwise limits the incurring of Debt pursuant hereto, except as set forth on Schedule 8G hereto.

**8H. Offering of the Series C Notes.** Neither the Company nor any agent acting on its behalf has, directly or indirectly, offered the Series C Notes or any similar security of the Company for sale to, or solicited any offers to buy the Series C Notes or any similar security of the Company from, or otherwise approached or negotiated with respect thereto with, any Person or Persons other than the Series C Note Purchasers, and neither the Company nor any agent acting on its behalf has taken or will take any action which would subject the issuance or sale of the Series C Notes to the provisions of Section 5 of the Securities Act or to the provisions of any securities or blue sky law of any applicable jurisdiction.

**8I. Use of Proceeds; Regulation U, Etc.** The proceeds of sale of the Series C Notes will, on the Closing Date, be used to repay indebtedness under the Bank Credit Agreement and for other general corporate purposes. None of the proceeds of the Notes have been or will be used, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying any “margin stock” (as defined in Regulation U (12 CFR Part 221) of the Board of Governors of the Federal Reserve System (herein called “margin stock”)) or for the purpose of maintaining, reducing or retiring any indebtedness which was originally incurred to purchase or carry any stock that is currently a margin stock or for any other purpose which might constitute this transaction a “purpose credit” within the meaning of such Regulation U. Neither the Company nor any agent acting on its behalf has taken or will take any action which might cause this Agreement, the Notes or any other Transaction Document to violate Regulation U, Regulation T or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Exchange Act, in each case as in effect now or as the same may hereafter be in effect. After applying the proceeds of the Notes, margin stock (within the meaning of Regulation U) will not constitute more than 25% of the value of the assets (either of the Company alone or the Company and its Subsidiaries on a consolidated basis).

**8J. ERISA.** No accumulated funding deficiency (as defined in section 302 of ERISA and section 412 of the Code), whether or not waived, exists with respect to any Plan (other than a Multiemployer Plan). No liability to the PBGC has been or is expected by the Company or any ERISA Affiliate to be incurred with respect to any Plan (other than a Multiemployer Plan) by the Company, any Subsidiary or any ERISA Affiliate which is or would be materially adverse to the business, condition (financial or otherwise) or operations of the Company and its Subsidiaries taken as a whole. None of the Company, any of its Subsidiaries or any ERISA Affiliate has incurred or presently expects to incur any withdrawal liability under Title IV of ERISA with respect to any Multiemployer Plan which is or would reasonably be expected to have a Material Adverse Effect. The execution and delivery of this Agreement and the other Transaction Documents and the issuance and sale of the Notes were and will be exempt from, or did not and will not involve any transaction which is subject to the prohibitions of, section 406 of ERISA and did not and will not involve any transaction in connection with which a penalty could be imposed under section 502(i) of ERISA or a tax could be imposed pursuant to section 4975 of the Code. The representation by the Company in the next preceding sentence is made in reliance upon and subject to the accuracy of the representation in paragraph 9B of the Prior Agreement (with respect to the Series B Notes) made by each Purchaser of Series B Notes under the Prior Agreement, and the accuracy of the representation in paragraph 9B of this Agreement (with respect to the Series C Notes) made by each Series C Note Purchaser.

**8K. Governmental Consent.** None of the nature of the Company or any of its Subsidiaries, or any of their respective businesses or properties, or any relationship between the Company or a Subsidiary and any other Person, or any circumstance in connection with the offering, issuance, sale or delivery of the Notes is such as to require as of the Closing Date on the part of the Company or any Subsidiary any authorization, consent, approval, exemption or other action by, notice to or filing with any court, administrative or governmental body (other than (a) routine filings after the Closing Date with the SEC and/or state blue sky authorities and (b) filings and consents required to consummate the Reorganization that will be obtained by the Closing Date) in connection with (i) the execution and delivery of this Agreement or the other Transaction Documents, (ii) the offering, issuance, sale or delivery of the Notes or (iii) fulfillment of or compliance with the terms and provisions of this Agreement, the Notes or the other Transaction Documents, in each case that has not been obtained.

**8L. Holding Company and Investment Company Status.** Neither the Company nor any Subsidiary is an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, or a “public utility” within the meaning of the Federal Power Act, as amended.

**8M. Possession of Franchises, Licenses, Etc.** The Company and its Subsidiaries possess all material franchises, certificates, licenses, development and other permits and other authorizations from governmental political subdivisions or regulatory authorities and all patents, trademarks, service marks, trade names, copyrights, licenses, easements, rights of way and other rights (collectively, “Material Rights”), free from burdensome restriction, that are necessary in the judgment of the Company in any material respect for the ownership, maintenance and operation of their business, properties and assets, and neither the Company nor any of its Subsidiaries is in violation of any Material Rights in any material respect. No event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such Material Rights, or which materially and adversely affects the rights of the Company or its Subsidiaries thereunder.

**8N. Environmental and Safety Matters.** The Company and its Subsidiaries and all of their respective properties and facilities have complied at all times and in all respects with all Environmental and Safety Laws except where failure to comply would not result in a Material Adverse Effect.

**8O. Employee Relations.** Neither the Company nor any Subsidiary is the subject of (i) any material strike, work slowdown or stoppage, union organizing drive or other similar activity or (ii) any material action, suit, investigation or other proceeding involving alleged employment discrimination, unfair termination, employee safety or similar matters or, to the best knowledge of the Company, is any such event imminent or likely to occur except those which, individually or in aggregate, could not reasonably be expected to have a Material Adverse Effect.

**8P. Shipping-Related Legislation.** To the best knowledge of the Company, no legislation has been introduced or enacted to either repeal or substantially modify Section 27 of the Merchant Marine Act, 1920, as amended to the Closing Date, commonly referred to as the Jones Act in a manner that could reasonably be expected to have a Material Adverse Effect.

**8Q. Disclosure.** Neither this Agreement, any other Transaction Document nor any other document, certificate or statement furnished to any Purchaser by or on behalf of the Company or Matson Navigation in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, taken as a whole, not misleading in light of the circumstances under which they were made; provided, that with respect to projections and other pro forma financial information included in such information, the Company only represents that such information was prepared in good faith based upon estimates and assumptions believed by the preparer thereof to be reasonable at the time made, it being recognized by the Purchasers that such financial information as it relates to future events is not to be viewed as a fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

**8R. Foreign Assets Control Regulations, Etc.**

(i) Neither the Company nor any Affiliated Entity is (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control, U.S. Department of Treasury (“OFAC”) (an “OFAC Listed Person”) or (b) a department, agency or instrumentality of, or is otherwise controlled by or acting on behalf of, directly or indirectly, (x) any OFAC Listed Person or (y) the government of a country subject to comprehensive U.S. economic sanctions administered by OFAC, currently Iran, Sudan, Cuba, Burma, Syria and North Korea (each OFAC Listed Person and each other entity described in clause (b), a “Blocked Person”).

(ii) No part of the proceeds from the sale of the Notes hereunder constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used, directly by the Company or indirectly through any Affiliated Entity, in connection with any investment in, or any transactions or dealings with, any Blocked Person.

(iii) To the actual knowledge of the chief executive officer and the Responsible Officers of the Company, neither the Company nor any Affiliated Entity (a) is under investigation by any Governmental Authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes under any applicable law (collectively, “**Anti-Money Laundering Laws**”), (b) has been assessed civil penalties under any Anti-Money Laundering Laws or (c) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

(iv) No part of the proceeds from the sale of the Notes will be used, directly or indirectly, for any improper payments to any governmental official or employee, political party, official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

## 9. REPRESENTATIONS OF THE SERIES C NOTE PURCHASERS.

Each Series C Note Purchaser represents as follows:

**9A. Nature of Purchase.** Such Purchaser is acquiring the Series C Notes purchased by it hereunder for the purpose of investment for its own account or for the account of funds that it manages for investment purposes and not with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act, provided that the disposition of such Purchaser’s property shall at all times be and remain within its control. Such Purchaser has no present intention of selling, granting participation in, or otherwise distributing any of the Series C Notes to be issued to it in any transaction which would be in violation of the securities laws of the United States of America or any state or other jurisdiction thereof, without prejudice, however, to Purchaser’s rights at all times to sell or otherwise dispose of all or any part of such securities under a registration under Securities Act or under an exemption from such registration available under the Securities Act and subject, nevertheless, to the disposition of such Purchaser’s property being at all times within its control. Such Purchaser acknowledges that the Series C Notes will not, on the Closing Date, be registered under the Securities Act, on the grounds that the sale provided for in this Agreement and the issuance of securities hereunder is exempt from registration under the Securities Act, and that the Company’s reliance on such exemption is predicated on the representations set forth in this Article 9.

**9B. Source of Funds.** At least one of the following statements is an accurate representation as to each source of funds (a “**Source**”) to be used by such Purchaser to pay the purchase price of the Series C Notes to be purchased by such Purchaser hereunder:

(i) the Source is an “insurance company general account” (as that term is defined in the United States Department of Labor’s Prohibited Transaction Exemption (“**PTE**”) 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the “**NAIC Annual Statement**”)) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser’s state of domicile; or

(ii) the Source is a separate account that is maintained solely in connection with such Purchaser’s fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(iii) the Source is either (a) an insurance company pooled separate account, within the meaning of PTE 90-1, or (b) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (iii), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(iv) the Source constitutes assets of an “investment fund” (within the meaning of Part VI of PTE 84-14 (the “**QPAM Exemption**”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan’s assets that are included in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Section VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of “control” in Section VI(e) of the QPAM Exemption) owns a 5% or more interest in the Company and (a) the identity of such QPAM and (ii) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this clause (iv); or

(v) the Source constitutes assets of a “plan(s)” (within the meaning of Section IV of PTE 96-23 (the “**INHAM Exemption**”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV of the INHAM Exemption), the conditions of Part I (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Section IV(d) of the INHAM Exemption) owns a 10% or more interest in the Company and (a) the identity of such INHAM and (b) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (v); or

(vi) the Source is a governmental plan; or

(vii) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (vii); or

(viii) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this paragraph 9B, the terms “employee benefit plan”, “governmental plan”, and “separate account” shall have the respective meanings assigned to such terms in Section 3 of ERISA.

**9C. Experience and Information.** Such Purchaser: (a) is an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act; (b) understands that the Series C Notes have not been registered under the Securities Act, or under any state securities laws, and are being offered and sold in reliance upon federal and state exemptions for transactions not involving any public offering; (c) by and through its officers or investment advisor (each of whom has such knowledge and experience in financial and business matters as to be capable of evaluating such Purchaser’s investment), has such knowledge and experience in financial and business matters as to be capable of evaluating its investment, and such Purchaser has the ability to bear the economic risks of its investment; (d) by and through its officers or investment advisor, has reviewed this Agreement, including all exhibits and schedules hereto, and has received (i) consolidated balance sheets of Matson Navigation and its Subsidiaries as of December 31, 2011, December 31, 2010, and December 31, 2009, and consolidated statements of income, shareholders’ equity and cash flows of Matson Navigation and its Subsidiaries for each such year, certified by Deloitte & Touche, and (ii) consolidated balance sheets of Matson Navigation and its Subsidiaries as of March 31, 2012 and as of March 31, 2011 and consolidated statements of income, stockholders’ equity and cash flows of Matson Navigation and its Subsidiaries for the three-month period ended on each such date, in each case prepared by Matson Navigation; and (e) by and through its officers or investment advisor, has had, during the course of the transactions contemplated hereby and prior to its receipt of the Series C Notes to be purchased by it, the opportunity to ask questions of, and has received answers from, the Company and Matson Navigation concerning the transactions contemplated hereby and to obtain any additional information which the Company or Matson Navigation possesses or could acquire without unreasonable effort or expense; provided, however, that nothing in this representation nor any such investigation by such Purchaser or by its officers or investment advisor shall limit, diminish, or constitute a waiver of any representation or warranty made under this Agreement or any Transaction Document by the Company and or impair any rights which such Purchaser may have with respect thereto.

**9D. Rule 144.** Such Purchaser understands that the Series C Notes may not be sold, transferred, or otherwise disposed of without registration under the Securities Act or the availability of an exemption therefrom and that in the absence of such registration or exemption, the Series C Notes must be held indefinitely. In particular, such Purchaser is aware that the Series C Notes may not be sold pursuant to Rule 144 promulgated under the Securities Act unless all of the applicable conditions of such rule are met, and that the Company is making no representation that such conditions will be met in the future. Such Purchaser represents that, in the absence of an effective registration statement covering the Series C Notes, it will sell, transfer, or otherwise dispose of the Series C Notes only in a manner consistent with its representations set forth in paragraph 9A.

**9E. Legends.** Such Purchaser understands that the certificates evidencing the Series C Notes will bear the following legends, in addition to any legend required by applicable state securities laws:

“THE SECURITIES REPRESENTED BY THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”). THEY MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT OR PURSUANT TO AN EXEMPTION FROM THE REQUIREMENT FOR SUCH A REGISTRATION STATEMENT.”

**10. DEFINITIONS; ACCOUNTING MATTERS.** For the purpose of this Agreement, the terms defined in paragraphs 10A and 10B (or within the text of any other paragraph) shall have the respective meanings specified therein and all accounting matters shall be subject to determination as provided in paragraph 10C.

**10A. Yield-Maintenance Terms.**

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which commercial banks in New York City or San Francisco, California are required or authorized to be closed.

“**Called Principal**” means, with respect to any Note, the principal of such Note that (i) is to be prepaid pursuant to paragraph 4B or (ii) is declared to be immediately due and payable pursuant to paragraph 7A, as the context requires.

“**Designated Spread**” means 50 basis points.

“**Discounted Value**” means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (converted to reflect the periodic basis on which interest on such Note is payable, if payable other than on a semiannual basis) equal to the Reinvestment Yield with respect to such Called Principal.

“**Reinvestment Yield**” means, with respect to the Called Principal of any Note, the Designated Spread over the yield to maturity implied by (i) the yields reported, as of 10:00 a.m. (New York City time) on the Business Day next preceding the Settlement Date with respect to such Called Principal, on the display designated as “**Page PX1**” on the Bloomberg Financial Services Screen (or such other display as may replace Page PX1 on the Bloomberg Financial Services Screen or, if Bloomberg Financial Services shall cease to report such yields or shall cease to be Prudential Capital Group’s customary source of information for calculating yield-maintenance amounts on privately placed notes, then such source as is then Prudential Capital Group’s customary source of such information), for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or if such yields shall not be reported as of such time or the yields reported as of such time shall not be ascertainable, (ii) the Treasury Constant Maturity Series yields reported, for the latest day for which such yields shall have been so reported as of the Business Day next preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such implied yield shall be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between yields reported for various maturities. The Reinvestment Yield shall be rounded to the same number of decimal places as appears in the coupon of the applicable Note.

“**Remaining Average Life**” means, with respect to the Called Principal of any Note, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) each Remaining Scheduled Payment of such Called Principal (but not of interest thereon) by (b) the number of years (calculated to the nearest one-twelfth year) which will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

“**Remaining Scheduled Payments**” means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due on or after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date.

“**Settlement Date**” means, with respect to the Called Principal of any Note, the date on which such Called Principal (i) is to be prepaid pursuant to paragraph 4B or (ii) is declared to be immediately due and payable pursuant to paragraph 7A, as the context requires.

“**Yield-Maintenance Amount**” means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Called Principal of such Note over the sum of (i) such Called Principal plus (ii) interest accrued thereon as of (including interest due on) the Settlement Date with respect to such Called Principal. The Yield-Maintenance Amount shall in no event be less than zero.

#### **10B. Other Terms.**

“**A&B**” means Alexander & Baldwin, Inc., a Hawaii corporation incorporated in 1900.

“**A&B Capital Contribution**” means the capital contribution made by the Company to New A&B on the Initial Funding Date (as defined in the Bank Credit Agreement) pursuant to the terms of the Separation Agreement, in an aggregate amount not to exceed \$160,000,000.

“**A&B Holdings**” is defined in paragraph 1B.

“**A&B Merger Corp.**” is defined in paragraph 1B.

“**Acquisition**”, by any Person, means the acquisition by such Person, in a single transaction or in a series of related transactions, of either (a) all or substantially all of the property of, or a line of business or division of, another Person or (b) at least a majority of the voting capital stock or other equity interests of another Person, in each case whether or not involving a merger or consolidation with such other Person.

“**Affiliate**” means any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, the Company. A Person shall be deemed to control another Person if such first Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

“**Affiliated Entity**” means the Subsidiaries of the Company and any of their or the Company’s respective Controlled Affiliates.

“**Agreement**” is defined in paragraph 11C.

“**Authorized Officer**” means any of the Company’s Chief Executive Officer, Chief Financial Officer, President, one of its Vice Presidents or its Treasurer.

“**Bank Credit Agreement**” means that certain Credit Agreement, dated as of June 4 2012, by and among the Company, Bank of America, N.A., First Hawaiian Bank and the other lenders and financial institutions party thereto, as the same may be amended, amended and restated, supplemented, refinanced, replaced or otherwise modified from time to time.

“**Bankruptcy Law**” is defined in clause (vii) of paragraph 7A.

“**Blocked Person**” is defined in paragraph 8R.

“**Business Day**” is defined in paragraph 10A.

“**Capital Assets**” means all assets other than current assets, and shall not include any amounts in the Capital Construction Fund.

“**Capital Construction Fund**” means the fund established and maintained by Company in accordance with Section 607 of the Merchant Marine Act, 1936, as amended.

“**Capitalized Lease Obligations**” means, with respect to any Person, any rental obligation of such Person which, under GAAP in effect as of June 4, 2012, is or will be required to be capitalized on the books of such Person, taken at the amount thereof accounted for as indebtedness (net of interest expense) in accordance with such principles.

“**CCF**” means the capital construction fund created under Matson Navigation’s Capital Construction Fund Agreement with the United States of America through the Maritime Administrator.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et. seq.), as amended, and the regulations promulgated thereunder.

“**CFC**” means a controlled foreign corporation (as that term is defined in Section 957(a) of the Code).

“**Change of Control**” means (i) the acquisition by any “**person**” or “**group**” (as such terms are used in Sections 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934) of outstanding shares of voting stock of the Company representing more than 50% of voting control of the Company, provided, however, that the Reorganization, in and of itself, shall not constitute a Change of Control, or (ii) after the Distribution, the failure of the Company to own 100% of the equity interest of Matson Navigation at any time thereafter.

“**Closing**” means the time, after the satisfaction of each of the conditions precedent in paragraph 3, when (i) this Agreement has become effective to amend and restate the Prior Agreement, and (ii) the Series C Notes have been purchased and sold as provided in this Agreement.

“**Closing Date**” is defined in paragraph 2B.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral Agent**” means The Prudential Insurance Company of America, in its capacity as collateral agent under the Intercreditor Agreement (as defined in the Prior Agreement) and the Collateral Documents (as defined in the Prior Agreement), and its successor and assigns in that capacity.

“**Company**” is defined in paragraph 1B.

“**Company Assignment and Assumption**” means the Assignment and Assumption in a form to be agreed and to be executed by Matson Navigation, the Company and the holders of the Notes pursuant to which (a) Matson Navigation assigns and delegates to the Company, and the Company accepts such assignment and delegation of, all of Matson Navigation’s rights and obligations in, to and under (i) this Agreement (including those related to the issue, purchase and sale of the Series C Notes) and (ii) the Series B Notes and (b) Matson Navigation is released from all obligations under this Agreement as an issuer of the Notes.

“**Consolidated EBITDA**” means, for any period, for the Company and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Expense for such period, (ii) the provision for federal, state, local and foreign income taxes payable for such period, (iii) depreciation expense for such period, (iv) amortization expense for such period, (v) one-time expenses related to the Reorganization and Spin-Off provided that the aggregate amount of expenses added back to Consolidated EBITDA pursuant to this clause (v) shall not exceed \$12,000,000 during the term of this Agreement and (vi) non-cash stock-based compensation; minus (b) to the extent included in the calculation of Consolidated Net Income, equity in earnings from unconsolidated Affiliates per GAAP; plus (c) cash distributions received during such period from unconsolidated Affiliates. For purposes of calculating Consolidated EBITDA for any period of four consecutive quarters, if during such period the Company or any Subsidiary shall have consummated (i) an Acquisition of a Person that constitutes a Material Subsidiary (including any such Acquisition structured as an asset purchase, merger or consolidation) or an Acquisition of a Material Line of Business, then Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such transaction occurred on the first day of such period; provided, that if the aggregate purchase price for any Acquisition is greater than or equal to \$25,000,000, Consolidated EBITDA shall only be calculated on a pro forma basis to the extent such pro forma calculations are based on audited financial statements or other financial statements reasonably satisfactory to the Required Holders and (ii) a disposition of all or substantially all of the assets of a Material Subsidiary or of at least 50% of the equity interests of a Material Subsidiary or of a Material Line of Business or operating division, then Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such transaction occurred on the first day of such period.

“**Consolidated Interest Expense**” means, for any period, for the Company and its Subsidiaries on a consolidated basis, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, plus (b) the portion of rent expense with respect to such period under capital leases that is treated as interest in accordance with GAAP.

“**Consolidated Interest Coverage Ratio**” means, on any date of determination thereof, the ratio of (i) Consolidated EBITDA for the period of four consecutive fiscal quarters ended on such date to (ii) Consolidated Interest Expense for such period.

“**Consolidated Leverage Ratio**” is defined in paragraph 6A(2).

“**Consolidated Net Income**” means, for any period, the consolidated net income of the Company and its Subsidiaries (excluding, to the extent included in such consolidated net income, (a) non-cash gains or losses during such period from the write-up or write-down of assets and (b) income or loss during such period from discontinued operations) as determined in accordance with GAAP.

“**Consolidated Net Worth**” means, at any time of determination thereof, for the Company and Subsidiaries determined in accordance with GAAP, the sum of (i) consolidated shareholders’ equity, and (ii) any consolidated mezzanine equity (or other temporary or non-permanent equity) resulting from the application of the Financial Accounting Standards Board Accounting Standards Codification Topic 718 and related stock-based compensation awards issued to management which are puttable upon a change of control; provided, that any determination of Consolidated Net Worth shall exclude all non-cash adjustments to Consolidated Net Worth resulting from the application of the Financial Accounting Standards Board Accounting Standards Codification Topic 960.

“**Consolidated Tangible Assets**” means, as of any date, total assets (excluding treasury stock, unamortized debt discount and expense, goodwill, trademarks, trade names, patents, deferred charges and other intangible assets) of the Company and its Subsidiaries on a consolidated basis, as determined in accordance with GAAP. Unless otherwise specified, “Consolidated Tangible Assets” at any time will be deemed to be such amount as determined based on the most recent financial statements delivered at such time pursuant to the requirements of paragraph 5A(i) or (ii).

“**Consolidated Tangible Net Worth**” means, as of the time of any determination, Consolidated Net Worth minus the sum of treasury stock, unamortized debt discount and expense, goodwill, trademarks, trade names, patents, deferred charges and other intangible assets of the Company and Subsidiaries on a consolidated basis.

“**Contribution**” is defined in paragraph 1B.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Conversion**” is defined in paragraph 1B.

“**Coupon Adjustment**” is defined in paragraph 2A.

“**Credit Parties**” means the Company and the Guarantors.

“**Debt**” means, as to any Person at the time of determination thereof without duplication, (a) any indebtedness of such Person (i) for borrowed money, including commercial paper and revolving credit lines, (ii) evidenced by bonds, debentures or notes or otherwise representing extensions of credit, whether or not representing obligations for borrowed money (except trade accounts payable arising in the ordinary course of business) or (iii) for the payment



of the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, regardless of when such liability or other obligation is due and payable, (b) Capitalized Lease Obligations of such Person, (c) direct or contingent obligations under standby letters of credit (and substantially similar instruments such as bank guaranties), (d) Guarantees, assumptions and endorsements by such Person (other than endorsements of negotiable instruments for collection in the ordinary course of business) of Debt of another Person of the types described in clauses (a), (b) and (c) hereof, and (e) Debt of another Person of the types described in clauses (a), (b) and (c) hereof that is secured by Liens on the property or other assets of such Person. Notwithstanding the foregoing, "Debt" shall not include (i) to the extent not exceeding \$10,000,000 at any time outstanding, unsecured contingent reimbursement obligations under standby letters of credit (and substantially similar instruments such as bank guaranties) or (ii) a Guarantee of Matson Navigation's trade accounts receivable purchased or held by the CCF.

"**Distribution**" is defined in paragraph 1B.

"**Domestic Subsidiary**" means any Subsidiary that is organized under the laws of any state of the United States of America or the District of Columbia.

"**Election Notice**" is defined in paragraph 2A.

"**Eligible Business Line**" means any business engaged in as of the date of this Agreement by Matson Navigation or any of its Subsidiaries or any business reasonably related thereto (but in no event an airline).

"**Environmental and Safety Laws**" means all federal, state and local laws, regulations and ordinances, relating to the discharge, handling, disposition or treatment of Hazardous Materials and other substances or the protection of the environment or of employee health and safety, including, without limitation, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. Section 1901 et. Seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et. Seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et. Seq.), the Clean Air Act (42 U.S.C. Section 7401 et. seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et. seq.), the Occupational Safety and Health Act (29 U.S.C. Section 651 et. seq.) and the Emergency Planning and Community Right-To-Know Act (42 U.S.C. Section 11001 et. seq.), each as the same may be amended and supplemented.

"**Environmental Liabilities and Costs**" means as to any Person, all liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages, treble damages, contribution, cost recovery, costs and expenses (including all fees, disbursements and expenses of counsel, expert and consulting fees, and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand, by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, permit, order or agreement with any federal, state or local Governmental Authority or other Person, arising from environmental, health or safety conditions, or the release or threatened release of a contaminant, pollutant or Hazardous Material into the environment, resulting from the operations of such Person or its subsidiaries, or breach of any Environmental and Safety Law or for which such Person or its Subsidiaries is otherwise liable or responsible.

"**ERISA**" means the Employment Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**" means any corporation which is a member of the same controlled group of corporations as the Company within the meaning of section 414(b) of the Code, or any trade or business which is under common control with the Company within the meaning of section 414(c) of the Code.

"**Event of Default**" means any of the events specified in paragraph 7A, provided that there has been satisfied any requirement in connection with such event for the giving of notice, or the lapse of time, or the happening of any further condition, event or act, and "**Default**" means any of such events, whether or not any such requirement has been satisfied.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"**Excluded Subsidiary**" means (a) each CFC and (b) each U.S. Foreign Holdco.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**GAAP**" has the meaning provided in paragraph 10C.

"**Governmental Authority**" means (a) the government of (i) the United States of America or any state or other political subdivision thereof, or (ii) any other jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

"**Guarantee**" means, without duplication, any obligation, contingent or otherwise, of any Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation of any other Person (the primary obligor) in any manner, directly or indirectly, and including any obligation: (a) to make any loan, advance or capital contribution, or for the purchase of any property from, any Person, in each case for the purpose of enabling such Person to maintain working capital, net worth or any other balance sheet condition or to pay debts, dividends or expenses except for advances, deposits and initial payments made in the usual and ordinary course of business for the purchase or acquisition of property or services; (b) to purchase materials, supplies or other property or services if such obligation requires that payment for such materials, supplies or other property or services be made regardless of whether or not delivery of such materials, supplies or other property or services is ever made or tendered; (c) to rent or lease (as lessee) any real or personal property if such obligation is absolute and unconditional under conditions not customarily found in commercial leases then in general use; or (d) of any partnership or joint venture in which such Person is a general partner or joint venturer if such obligation is not expressly non-recourse to such Person; but excluding (i) any completion guaranties issued in connection with a real estate development project to the extent contingent and not constituting a direct or indirect obligation to repay Debt, (ii) obligations under environmental indemnification agreements and (iii) a guaranty of Matson Navigation's trade accounts receivable purchased or held by the CCF.

"**Guarantors**" means, collectively, (a) each Material Domestic Subsidiary identified as a "Guarantor" on the signature pages to the Multiparty Guaranty, (b) each Person that becomes a party to the Multiparty Guaranty as a Guarantor pursuant to paragraph 5H or otherwise and (c) the successors of any of the foregoing; provided, however, that no Excluded Subsidiary shall be a Guarantor. A Guarantor shall be released from the Multiparty Guaranty pursuant to, and in accordance with, the terms hereof or the Multiparty Guaranty.

“**Hazardous Materials**” means (a) any material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances” or any other formulations intended to define, list or classify substances by reason of their deleterious properties, (b) any oil, petroleum or petroleum derived substance, (c) any flammable substances or explosives, (d) any radioactive materials, (e) asbestos in any form, (f) electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million, (g) pesticides or (h) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental agency or authority or which may or could pose a hazard to the health and safety of persons in the vicinity thereof.

“**Hostile Acquisition**” means any Acquisition that has not been approved by the board of directors or other governing body of the applicable entity.

“**including**” means, unless the context clearly requires otherwise, “**including without limitation**”.

“**Indemnity and Contribution Agreement**” is defined in paragraph 3A.

“**Lien**” means any mortgage, pledge, security interest, encumbrance, deposit arrangement, lien (including any lien securing any Capital Lease Obligation) or charge of any kind (including any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

“**Manulani**” means that certain container vessel of the type Philadelphia CV 2600, named M.V. Manulani, official number 1168529.

“**margin stock**” is defined in paragraph 8I.

“**Material Adverse Effect**” means: (a) a material adverse change in, or a material adverse effect upon, on the business, condition (financial or otherwise) or operations of the Company and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Credit Party to perform its obligations under any Transaction Document; or (c) a material adverse effect on the material rights and remedies of the holders of the Notes, which material adverse effect was not caused by any holder of a Note. Notwithstanding anything to the contrary contained herein, for the avoidance of doubt, it is understood and agreed that none of the incurrence of up to \$170,000,000 of incremental net indebtedness (after giving effect to the repayment of bank indebtedness with all or a portion of the proceeds of the Series C Notes), the Reorganization, the A&B Capital Contribution and the Spin-Off, individually or collectively, shall be deemed to constitute a Material Adverse Effect.

“**Material Domestic Subsidiary**” means any Domestic Subsidiary of the Company (other than a U.S. Foreign Holdco) that accounts for, on the date of determination, 5% or more of Consolidated EBITDA of the Company and its Subsidiaries for the period of four consecutive fiscal quarters then or most recently ended.

“**Material Line of Business**” means a line of business or an operating division that accounts for, as of the most recently ended four fiscal quarter period of the Company, 5% or more of Consolidated EBITDA of the Company and its Subsidiaries for the most recently ended four fiscal quarter period of the Company.

“**Material Subsidiary**” means (a) any Guarantor and (b) any Subsidiary that accounts for, as of the most recently ended four fiscal quarter period of the Company, 5% or more of Consolidated EBITDA of the Company and its Subsidiaries for the most recently ended four fiscal quarter period of the Company.

“**Matson Navigation**” is defined in the introductory paragraph hereto.

“**Merger**” is defined in paragraph 1B.

“**Moody’s**” means Moody’s Investors Service, Inc. or any successor thereto.

“**Multiemployer Plan**” means any Plan which is a “**multiemployer plan**” (as such term is defined in section 4001(a)(3) of ERISA).

“**Multiparty Guaranty**” is defined in paragraph 3A.

“**New A&B**” is defined in paragraph 1B.

“**Notes**” is defined in paragraph 1D.

“**OFAC Listed Person**” is defined in paragraph 8R.

“**Officer’s Certificate**” means a certificate signed in the name of the Company by its Chief Executive Officer, Chief Financial Officer, President, one of its Vice Presidents or its Treasurer.

“**One-Time Fee**” is defined in paragraph 2A.

“**PBGC**” means the Pension Benefit Guaranty Corporation, or any successor or replacement entity thereto under ERISA.

“**Person**” means and include an individual, a partnership, a joint venture, a corporation, a trust, a limited liability company, an unincorporated organization and a government or any department or agency thereof.

“**PIM**” means Prudential Investment Management, Inc.

“**Plan**” means any “**employee pension benefit plan**” (as such term is defined in section 3 of ERISA) which is or has been established or maintained, or to which contributions are or have been made, by either Company or any ERISA Affiliate.

“**Prior Agreement**” has the meaning given in paragraph 1A.

“**Priority Debt**” means, at any time of determination thereof and without duplication, (a) Debt of the Company or Matson Navigation secured by any Lien (including, without limitation, all Title XI Debt and all Debt secured by marine assets, in each case whether full recourse or limited recourse) and (b) all Debt secured by a Lien (including, without limitation, all Title XI Debt and all Debt secured by a Lien on marine assets, in each case whether full recourse or limited recourse) and all unsecured Debt of Subsidiaries of the Company (other than unsecured Debt of Guarantors), provided, however, that Priority Debt shall not include (i) Debt owing from any Subsidiaries to the Company or any other Subsidiary, (ii) the Notes or (iii) any Debt or other obligations of the Company or any Subsidiary under the Bank Credit Agreement, including any obligations with respect to any letter of credit issued thereunder (other than those described in paragraph 6C(1)(vi)), and any Guarantee with respect to any Debt or other obligations under the Bank Credit Agreement, so long as the Company is in compliance with the second and third provisos of paragraph 6C(1)(vii).

“**Prohibited Transaction**” means any transaction described in section 406 of ERISA which is not exempt by reason of section 408 of ERISA or the transitional rules set forth in section 414(c) of ERISA and any transaction described in section 4975(c) of the Code which is not exempt by reason of section 4975(c) (2) or section 4975(d) of the Code, or the transitional rules of section 2003(c) of ERISA.

“**Purchasers**” means each holder of Notes identified on the Purchaser Schedules hereto.

“**Reorganization**” is defined in paragraph 1B.

“**Required Holder(s)**” means the holder or holders of at least 51% of the aggregate principal amount of the Notes or of a Series of Notes from time to time outstanding.

“**Responsible Officer**” means any of the Company’s chief financial officer, principal accounting officer, treasurer or controller and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement or matters referenced therein.

“**Restricted Payments**” is defined in paragraph 6B.

“**SEC**” means the Securities and Exchange Commission, and any Governmental Authority succeeding to any of its principal functions.

“**Section 2 Citizen**” means a Person that is a citizen of the United States of America as required for the coastwise trade under Section 50501 of Title 46 of the United States Code and the regulations in effect from time to time thereunder.

“**Securities Act**” means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“**Separation Agreement**” means the Separation and Distribution Agreement, entered into in on or about June 8, 2012, between Alexander & Baldwin Holdings, Inc. (to be renamed Matson, Inc.) and A & B II, Inc., and shall include the schedules and exhibits relating thereto.

“**Series**” of Notes shall mean Notes which have (i) the same final maturity, (ii) the same principal prepayment dates, (iii) the same principal prepayment amounts (as a percentage of the original principal amount of each Note), (iv) the same interest rate, (v) the same interest payment periods and (vi) the same date of issuance (which, in the case of a Note issued in exchange for another Note, shall be deemed for these purposes the date on which such Note’s ultimate predecessor Note was issued). The Series B Notes, the Series C-1 Notes, the Series C-2 Notes and the Series C-3 Notes each constitute a separate “Series” of Notes.

“**Series C-1 Note Purchasers**” means the purchasers of Series C-1 Notes identified on the Purchaser Schedules hereto.

“**Series C-2 Note Purchasers**” means the purchasers of Series C-2 Notes identified on the Purchaser Schedules hereto.

“**Series C-3 Note Purchasers**” means the purchasers of Series C-3 Notes identified on the Purchaser Schedules hereto.

“**Series B Notes**” is defined in paragraph 1C.

“**Series C Notes**” is defined in paragraph 1D.

“**Series C-1 Notes**” is defined in paragraph 1D.

“**Series C-2 Notes**” is defined in paragraph 1D.

“**Series C-3 Notes**” is defined in paragraph 1D.

“**Significant Holder**” means (i) each Purchaser, so long as such Purchaser shall hold any Note, or (ii) any other holder of at least 10% of the aggregate principal amount of the Notes of any Series from time to time outstanding.

“**S&P**” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. or any successor thereto

“**Spin-Off**” is defined in paragraph 1B.

“**Subsidiary**” means, as to any Person, any company, whether operating as a corporation, joint venture, partnership, limited liability company or other entity, which is consolidated with such Person in accordance with GAAP. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Company.

“**Title XI Debt**” means all Debt of the Company or Matson Navigation or any Subsidiary that is guaranteed by the United States of America pursuant to 46 USC Chapter 537.

“**Transaction Documents**” means this Agreement, the Notes, the Company Assignment and Assumption, the Multiparty Guaranty, the Indemnity and Contribution Agreement and the other agreements, documents, certificates and instruments now or hereafter executed or delivered by the Company or any Subsidiary or Affiliate in connection with this Agreement.

“**Transferee**” means any direct or indirect transferee of all or any part of any Note purchased under this Agreement.

“**U.S. Foreign Holdco**” means any Domestic Subsidiary, substantially all of the assets of which consist of equity interests of one or more Foreign Subsidiaries.

“**Vessel**” means each vessel that is (or is required to be) documented under and pursuant to the laws of the United States with a coastwise endorsement owned or operated by the Company or any Subsidiary.

**10C. Accounting Principles, Terms and Determinations; Changes in GAAP.** All references in this Agreement to “**generally accepted accounting principles**” and “**GAAP**” shall be deemed to refer to generally accepted accounting principles in effect in the United States of America at the time of application thereof, but excluding in each case the effects of Accounting Standards Codification 825-10-25 (previously referred to as SFAS 159) or any successor or similar provision to the extent it relates to “**fair value**” accounting for assets or liabilities. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all unaudited financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared, in accordance with generally accepted accounting principles, applied on a basis consistent with the most recent audited consolidated financial statements of the Company and its Subsidiaries delivered pursuant to clause (ii) of paragraph 5A or, if no such statements have been so delivered, the most recent audited financial statements referred to in clause (i) of paragraph 8B.

If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Transaction Document, and either the Company or the Required Holders shall so request, the holders of the Notes and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Holders); provided that, (A) until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) until so amended, the Company shall provide to the holders of the Notes financial statements and other documents reasonably requested by any holder of a Note setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with the rules in effect on June 4, 2012 for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

## **11. MISCELLANEOUS.**

**11A. Note Payments.** The Company agrees that, so long as any Purchaser shall hold any Note, it will make payments of principal of, interest on, and any Yield-Maintenance Amount payable with respect to, such Note, which comply with the terms of this Agreement, by wire transfer of immediately available funds for credit on the date due to the account or accounts of such Purchaser specified in the Purchaser Schedule attached hereto or such other account or accounts in the United States as such Purchaser may from time to time designate in writing, notwithstanding any contrary provision herein or in any Note with respect to the place of payment. Each Purchaser agrees that, before disposing of any Note, it will make a notation thereon (or on a schedule attached thereto) of all principal payments previously made thereon and of the date to which interest thereon has been paid. The Company agrees to afford the benefits of this paragraph 11A to any Transferee which shall have made the same agreement as the Purchasers have made in this paragraph 11A.

**11B. Expenses.** The Company agrees, whether or not the transactions contemplated hereby shall be consummated, to pay, and save each Purchaser and any Transferee harmless against liability for the payment of, all reasonable out-of-pocket expenses arising in connection with such transactions, including (i) all document production and duplication charges and the fees and expenses of any special counsel engaged by the Purchasers or any Transferee in connection with this Agreement on any other Transaction Document, the transactions contemplated hereby and thereby and any subsequent proposed modification of, or proposed consent under, this Agreement or any other Transaction Document, whether or not such proposed modification shall be effected or proposed consent granted, and (ii) the reasonable costs and expenses, including attorneys’ fees, incurred by any Purchaser or any Transferee in enforcing any rights under this Agreement, the Notes or any other Transaction Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the transactions contemplated hereby or by reason of any Purchaser’s or any Transferee’s having acquired any Note, including without limitation costs and expenses incurred in any bankruptcy case, provided however, the Company will not be required to pay the expenses of any holder of a Note or any Transferee in connection with the transfer of any Note by any holder of a Note to any Transferee. The obligations of the Company under this paragraph 11B shall survive the transfer of any Note or portion thereof or interest therein by any Purchaser or any Transferee and the payment of any Note.

**11C. Consent to Amendments.** This Agreement may be amended, and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, if the Company shall obtain the written consent to such amendment, action or omission to act, of the Required Holder(s) of the Notes of each Series except that, (i) without the written consent of the holder or holders of all Notes of a particular Series, and if an Event of Default shall have occurred and be continuing, of the holders of all Notes of all Series, at the time outstanding, no amendment to this Agreement shall change the maturity of any Note, or change or affect the principal thereof, or change or affect the rate or time of payment of interest on or any Yield-Maintenance Amount payable with respect to the Notes of such Series, and (ii) without the written consent of the holder or holders of all Notes at the time outstanding, no amendment to or waiver of the provisions of this Agreement shall change or affect the provisions of paragraph 7A or this paragraph 11C insofar as such provisions relate to proportions of the principal amount of the Notes of any Series, or the rights of any individual holder of Notes, required with respect to any declaration of Notes to be due and payable or with respect to any consent, amendment, waiver or declaration. Each holder of any Note at the time or thereafter outstanding shall be bound by any consent authorized by this paragraph 11C, whether or not such Note shall have been marked to indicate such consent, but any Notes issued thereafter may bear a notation referring to any such consent. No course of dealing between the Company and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note. As used herein and in the Notes, the term “**this Agreement**” and references thereto means this Agreement as it may from time to time be amended or supplemented.

**11D. Form, Registration, Transfer and Exchange of Notes.** The Notes are issuable as registered notes without coupons in denominations of at least \$1,000,000, except as may be necessary to reflect any principal amount not evenly divisible by \$1,000,000. The Company shall keep at its principal office a register in which the Company shall provide for the registration of Notes and of transfers of Notes. Upon surrender for registration of transfer of any Note at the principal office of the Company, the Company shall, at its expense, execute and deliver one or more new Notes of like tenor and of a like

aggregate principal amount, registered in the name of such transferee or transferees. At the option of the holder of any Note, such Note may be exchanged for other Notes of like tenor and of any authorized denominations, of a like aggregate principal amount, upon surrender of the Note to be exchanged at the principal office of the Company. Whenever any Notes are so surrendered for exchange, the Company shall, at its expense, execute and deliver the Notes which the holder making the exchange is entitled to receive. Each prepayment of principal payable on each prepayment date upon each new Note issued upon any such transfer or exchange shall be in the same proportion to the unpaid principal amount of such new Note as the prepayment of principal payable on such date on the Note surrendered for registration of transfer or exchange bore to the unpaid principal amount of such Note. No reference need be made in any such new Note to any prepayment or prepayments of principal previously due and paid upon the Note surrendered for registration of transfer or exchange. Every Note surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer duly executed, by the holder of such Note or such holder's attorney duly authorized in writing. Any Note or Notes issued in exchange for any Note or upon transfer thereof shall carry the rights to unpaid interest and interest to accrue which were carried by the Note so exchanged or transferred, so that neither gain nor loss of interest shall result from any such transfer or exchange. Upon receipt of written notice from the holder of any Note of the loss, theft, destruction or mutilation of such Note and, in the case of any such loss, theft or destruction, upon receipt of such holder's unsecured indemnity agreement, or in the case of any such mutilation upon surrender and cancellation of such Note, the Company will make and deliver a new Note, of like tenor, in lieu of the lost, stolen, destroyed or mutilated Note.

**11E. Persons Deemed Owners; Participations.** Prior to due presentment for registration of transfer, the Company may treat the Person in whose name any Note is registered as the owner and holder of such Note for the purpose of receiving payment of principal of and Yield Maintenance Amount, if any, and interest on such Note and for all other purposes whatsoever, whether or not such Note shall be overdue, and the Company shall not be affected by notice to the contrary. Subject to the preceding sentence, the holder of any Note may from time to time grant participations in all or any part of such Note on such terms and conditions as may be determined by such holder in its sole and absolute discretion.

**11F. Survival of Representations and Warranties; Entire Agreement.** All representations and warranties contained herein, in any other Transaction Document or made in writing by or on behalf of the Company or any other Credit Party in connection herewith or therewith shall survive the execution and delivery of this Agreement, the Notes and the other Transaction Documents, the transfer of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any Transferee, regardless of any investigation made at any time by or on behalf of any Purchaser or any Transferee. Subject to the preceding sentence, this Agreement, the Notes, the other Transaction Documents and, until the effectiveness of the amendment and restatement thereof by this Agreement, the Prior Agreement, embody the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to the subject matter hereof; provided, however, that the obligations of Matson Navigation to pay any Rate Lock Delayed Delivery Fee or Rate Lock Cancellation Fee, as such terms are defined in, and as such fees are payable under certain circumstances pursuant to the terms of, that certain letter dated May 10, 2012 from PIM and accepted and agreed to by Matson Navigation, shall survive the execution and delivery of this Agreement.

**11G. Successors and Assigns.** All covenants and other agreements in this Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto (including, without limitation, any Transferee) whether so expressed or not.

**11H. Independence of Covenants.** All covenants hereunder and in the other Transaction Documents shall be given independent effect so that if a particular action or condition is prohibited by any one of such covenants, the fact that it would be permitted by an exception to, or otherwise be in compliance within the limitations of, another covenant shall not (i) avoid the occurrence of a Default or Event of Default if such action is taken or such condition exists or (ii) in any way prejudice an attempt by the holder of any Note to prohibit, through equitable action or otherwise, the taking of any action by the Company or any Subsidiary which would result in a Default or Event of Default.

**11I. Notices.** All written communications provided for hereunder shall be sent by first class mail or nationwide overnight delivery service (with charges prepaid) and (i) if to any Purchaser, addressed as specified for such communications in the Purchaser Schedule attached hereto or at such other address as any such Purchaser shall have specified to the Company in writing, (ii) if to any other holder of any Note, addressed to it at such address as it shall have specified in writing to the Company or, if any such holder shall not have so specified an address, then addressed to such holder in care of the last holder of such Note which shall have so specified an address to the Company and (iii) if to the Company, addressed to it at 555 12th Street, 8th Floor, Oakland, CA 94067, Attention: Chief Financial Officer or at such other address as the Company shall have specified to each holder of a Note in writing, provided, however, that any such communication to the Company may also, at the option of the Person sending such communication, be delivered by any other means either to the Company at its address specified above or to any Authorized Officer of the Company.

**11J. Descriptive Headings.** The descriptive headings of the several paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

**11K. Satisfaction Requirement.** If any agreement, certificate or other writing, or any action taken or to be taken, is, by the terms of this Agreement, required to be satisfactory to any Purchaser or the Required Holder(s), the determination of such satisfaction shall be made by such Purchaser or the Required Holder(s), as the case may be, in the sole and exclusive judgment (exercised in good faith) of the Person(s) making such determination.

**11L. Governing Law.** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice of law principles of the law of such state that would permit the application of the laws of a jurisdiction other than such state.

**11M. Payments Due on Non-Business Days.** Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or interest, or Yield-Maintenance Amount payable with respect to, any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

**11N. Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**11O. Jurisdiction and Process; Waiver of Jury Trial.**

(i) The Company irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Agreement, the Notes or the other Transaction Documents. To the fullest extent permitted by applicable law, the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(ii) The Company consents to process being served by or on behalf of any holder of Notes in any suit, action or proceeding of the nature referred to in paragraph 11O(i) by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, return receipt requested, to it at its address specified in paragraph 11I or at such other address of which such holder shall then have been notified pursuant to paragraph 11I. The Company agrees that such service upon receipt (a) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (b) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(iii) Nothing in this paragraph 11O shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(iv) The parties hereto hereby waive trial by jury in any action brought on or with respect to this Agreement, the Notes or any other document executed in connection herewith or therewith.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, IF THE ABOVE WAIVER OF THE RIGHT TO A TRIAL BY JURY IS NOT ENFORCEABLE, THE PARTIES HERETO AGREE THAT ANY AND ALL DISPUTES OR CONTROVERSIES OF ANY NATURE CONCERNING THIS AGREEMENT AND THE MATTERS CONTEMPLATED HEREBY (EACH, A "CLAIM"), INCLUDING ANY AND ALL QUESTIONS OF LAW OR FACT RELATING THERETO, SHALL, AT THE WRITTEN REQUEST OF ANY PARTY TO THIS AGREEMENT, BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE ("REFERENCE"). IN SUCH EVENT, THE PARTIES SHALL SELECT A SINGLE NEUTRAL REFEREE, WHO SHALL BE A RETIRED STATE OR FEDERAL JUDGE. IN THE EVENT THAT THE PARTIES CANNOT AGREE UPON A REFEREE, THE REFEREE SHALL BE APPOINTED BY THE COURT. THE REFEREE SHALL REPORT A STATEMENT OF DECISION TO THE COURT. NOTHING IN THIS PARAGRAPH SHALL LIMIT THE RIGHT OF ANY PARTY AT ANY TIME TO EXERCISE ANY AVAILABLE SELF-HELP REMEDIES, FORECLOSE AGAINST ANY COLLATERAL OR OBTAIN PROVISIONAL REMEDIES. THE PARTIES SHALL BEAR THE FEES AND EXPENSES OF THE REFEREE EQUALLY UNLESS THE REFEREE ORDERS OTHERWISE. THE REFEREE SHALL ALSO DETERMINE ALL ISSUES RELATING TO THE APPLICABILITY, INTERPRETATION, AND ENFORCEABILITY OF THIS PARAGRAPH. THE PARTIES ACKNOWLEDGE THAT THE CLAIMS WILL NOT BE ADJUDICATED BY A JURY.

**11P. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

**11Q. Binding Agreement.** When this Agreement is executed and delivered by the signatories hereto, it shall become a binding agreement (subject to satisfaction of the conditions precedent set forth herein) of the signatories hereto.

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**MATSON NAVIGATION COMPANY, INC.,**  
a Hawaii corporation

By: /s/ Matthew J. Cox  
Its: President

By: /s/ Joel M. Wine  
Its: Senior Vice President and Chief Financial Officer

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The foregoing Agreement is hereby accepted as of the date first above written.

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**, as a holder of Series B Notes, Series C-1 Notes, Series C-2 Notes and Series C-3 Notes

By: /s/ Cornelia Cheng  
Vice President

**PRUCO LIFE INSURANCE COMPANY**, as a holder of Series B Notes, Series C-2 Notes and Series C-3 Notes

By: /s/ Cornelia Cheng  
Vice President

**THE PRUDENTIAL LIFE INSURANCE COMPANY, LTD.**, as a holder of Series C-1 Notes

By: Prudential Investment Management (Japan), Inc., as Investment Manager

By: Prudential Investment Management, Inc., as Sub-Adviser

By: /s/ Cornelia Cheng  
Vice President

**GIBRALTAR LIFE INSURANCE CO., LTD.**, as a holder of Series C-1 Notes and Series C-3 Notes

By: Prudential Investment Management Japan Co., Ltd., as Investment Manager

By: Prudential Investment Management, Inc., as Sub-Adviser

By: /s/ Cornelia Cheng  
Vice President

**PRUDENTIAL ANNUITIES LIFE ASSURANCE CORPORATION**, as a holder of Series C-2 Notes

By: Prudential Investment Management, Inc., as investment manager

By: /s/ Cornelia Cheng  
Vice President

**PRUDENTIAL ARIZONA REINSURANCE UNIVERSAL COMPANY**, as a holder of Series C-2 Notes

By: Prudential Investment Management, Inc., as investment manager

By: /s/ Cornelia Cheng  
Vice President

**PRUDENTIAL INVESTMENT MANAGEMENT, INC.**

By: /s/ Cornelia Cheng  
Vice President

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THE PRUDENTIAL INSURANCE COMPANY OF AMERICA  
PRUCO LIFE INSURANCE COMPANY  
c/o Prudential Capital Group  
2029 Century Park East, Suite 710  
Los Angeles, CA 90067

As of June 4, 2012

MATSON NAVIGATION COMPANY, INC.  
555 12th Street  
Oakland, California 94607

Re: Limited Consent -- Amended and Restated Note Agreement

Ladies and Gentlemen:

1A. Reference is made to the Amended and Restated Note Agreement, dated as of May 19, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "**Agreement**"), by and between Matson Navigation Company, Inc., a Hawaii corporation (the "**Company**"), on the one hand, and the undersigned (the "**Noteholders**"), on the other hand. Capitalized terms used and not otherwise defined herein shall have the meanings provided in the Agreement. Reference is also made to that certain Second Amended and Restated Note Agreement, dated as of the date hereof (the "**New Note Agreement**"), initially entered into between the Company, on the one hand, and the Purchasers named therein, on the other hand.

1B. **Reorganization.** The Company has advised the Noteholders of a reorganization pursuant to which:

(i) A&B has incorporated Alexander & Baldwin Holdings, Inc., a Hawaii corporation subsequently to be re-named "Matson, Inc." as provided in clause (iv) of this Section 1B ("**A&B Holdings**"), as a new, wholly-owned direct Subsidiary of A&B, and A&B Holdings has incorporated A&B Merger Corporation, a Hawaii corporation ("**A&B Merger Corp.**"), as a new, wholly-owned direct Subsidiary of A&B Holdings, and, on or about June 6, 2012 A&B Merger Corp. will merge with and into A&B with A&B being the survivor of such merger (the "**Merger**"), after giving effect to which A&B Holdings will hold all of the capital stock of A&B and the stockholders of A&B Holdings will be the Persons which were the stockholders of A&B immediately prior to giving effect to the Merger;

(ii) after consummation of the Merger, A&B will convert into a Hawaii limited liability company to be named "Alexander & Baldwin, LLC" pursuant to applicable Hawaii law (the "**Conversion**") and will thereafter distribute all of the capital stock of the Company to A&B Holdings (the "**Distribution**"), after giving effect to which the Company will be a sister of A&B and a direct, wholly-owned Subsidiary of A&B Holdings;

(iii) after consummation of the Distribution, A&B Holdings will contribute all of the membership interests in A&B to A & B II, Inc., a Hawaii corporation subsequently to be re-named "Alexander & Baldwin, Inc." ("**New A&B**"), a newly formed, wholly-owned direct Subsidiary of A&B Holdings (the "**Contribution**"), after giving effect to which the direct parent and holder of all of the membership interests in A&B will be New A&B, and the direct parent and holder of all of the capital stock of both the Company and New A&B will be A&B Holdings (the collective transactions described in the foregoing portions of this Section 1B being referred to herein as the "**Reorganization**"); and

(iv) after consummation of the Contribution and after the close of the New York Stock Exchange on or about June 29, 2012, A&B Holdings will distribute all of the capital stock of New A&B to the public stockholders of A&B Holdings (the "**Spin-Off**"), following which the name change of A&B Holdings to "Matson, Inc." will become effective.

1C. **Limited Consents.** Pursuant to the provisions of paragraph 11C of the Agreement, and subject to the representations and warranties in Section 4 of this letter agreement and the conditions set forth in Section 5 of this letter agreement, the Noteholders hereby consent to (i) any Change of Control which may be deemed to occur solely as a result of the Merger, the Distribution or the other steps of the Reorganization as described in Section 1B of this letter agreement, (ii) the incurrence of the Liens which otherwise would be prohibited under the Agreement by virtue of the Company's entering into (a) the New Note Agreement and making the agreements contained in paragraphs 5G and 6C(1)(vi) and (vii) thereof and (b) the Bank Credit Agreement (as defined in the New Note Agreement) and making the agreements contain in Sections 2.03(a)(ii), 2.05, 2.15, 6.03 and 8.02(c) thereof, (iii) the A&B Capital Contribution (as defined in the New Note Agreement), the Reorganization and the Spin-Off, and (iv) the transfers of assets and assumptions of liabilities contemplated by Section 2.1 of the Separation Agreement (as defined in the New Note Agreement) and the termination of intercompany agreements contemplated by Section 2.2 of the Separation Agreement.

2. **Additional Event of Default.** It shall be an Event of Default under the Agreement if the Company elects the One-Time Fee pursuant to paragraph 2A of the New Note Agreement and if the Company does not pay the One-Time Fee (as defined in the New Note Agreement) on the day of the consummation of the Spin-Off.

3. **Limitation of Modifications.** The modifications effected in this letter agreement shall be limited precisely as written and shall not be deemed to be (a) an amendment, consent, waiver or other modification of any other terms or conditions of the Agreement or any other document related to the Agreement, or (b) a consent to any future amendment, consent, waiver or other modification. Except as expressly set forth in this letter, the Agreement and the documents related to the Agreement shall continue in full force and effect.

4. **Representations and Warranties.** The Company hereby represents and warrants as follows: (i) No Default or Event of Default has occurred and is continuing; (ii) the Company's execution, delivery and performance of the Agreement, as modified by this letter agreement, have been duly authorized by all necessary corporate and other action and do not and will not require any registration with, consent or approval of, or notice to or action by, any Person (including any governmental authority) in order to be effective and enforceable; and (iii) the Agreement, as modified by this letter agreement, constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application relating to or affecting the enforcement of creditors' rights or by general principles of equity.

5. Effectiveness. This letter agreement shall become effective on the date on which the Noteholders shall have received a fully executed counterpart of this letter agreement from the Company (and the Company shall have received a fully executed counterpart of this letter agreement from the Noteholders).

6. Miscellaneous.

(a) This document may be executed in multiple counterparts, which together shall constitute a single document. Delivery of executed counterparts of this letter agreement by telefacsimile or other secure electronic format (pdf) shall be effective as an original.

(b) This letter agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the internal laws of the State of New York, excluding choice-of-law principles of the law of such state that would permit the application of the laws of a jurisdiction other than such state.

[Remainder of the page intentionally left blank]

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If you are in agreement with the foregoing, please sign the counterpart of this letter agreement in the space indicated below and transmit it to the Noteholders whereupon, subject to the conditions expressed herein, it shall become a binding agreement between the Company, on the one hand, and the Noteholders, on the other hand.

Sincerely,

**THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA**

By: /s/ Cornelia Cheng  
Title: Vice President

**PRUCO LIFE INSURANCE COMPANY**

By: /s/ Cornelia Cheng  
Title: Vice President

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Accepted and agreed to  
as of the date first  
appearing above:

**MATSON NAVIGATION COMPANY, INC.**

By: /s/ Matthew J. Cox

Its: President

By: /s/ Joel M. Wine

Its: Senior Vice President and Chief Financial Officer

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**CREDIT AGREEMENT**

dated as of June 4 , 2012

among

**MATSON NAVIGATION COMPANY, INC.,**  
as the Initial Borrower,

**BANK OF AMERICA, N.A.,**  
as Agent,

and

the other Lenders party hereto,

**FIRST HAWAIIAN BANK,**  
as Syndication Agent,

**BRANCH BANKING AND TRUST COMPANY,**  
**JPMORGAN CHASE BANK, N.A.,**  
**PNC BANK, NATIONAL ASSOCIATION**

and

**U.S. BANK NATIONAL ASSOCIATION,**  
as Co-Documentation Agents

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,**  
and

**FIRST HAWAIIAN BANK,**  
as Joint Lead Arrangers and Co-Book Managers

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-

## CREDIT AGREEMENT

This CREDIT AGREEMENT (“Agreement”) is entered into as of June 4, 2012, among MATSON NAVIGATION COMPANY, INC., a Hawaii corporation (“Matson Navigation”), as the initial Borrower hereunder, each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), and BANK OF AMERICA, N.A., as Agent, Swing Line Lender and L/C Issuer, and FIRST HAWAIIAN BANK, as L/C Issuer.

The Borrower has requested that the Lenders provide a revolving credit facility, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### ARTICLE I.

#### DEFINITIONS AND ACCOUNTING TERMS

**1.01 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

“A&B Capital Contribution” means the capital contribution made by Matson to New A&B, Inc. on the Initial Funding Date pursuant to the terms of the Separation Agreement, in an aggregate amount not to exceed \$160,000,000.

“Acquisition”, by any Person, means the acquisition by such Person, in a single transaction or in a series of related transactions, of either (a) all or substantially all of the property of, or a line of business or division of, another Person or (b) at least a majority of the voting capital stock or other equity interests of another Person, in each case whether or not involving a merger or consolidation with such other Person.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit E-2 or any other form approved by the Agent.

“Affiliate” means, without duplication, any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, another Person. A Person shall be deemed to control another Person if such first Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

“Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Agent’s Office” means the Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify to the Borrower and the Lenders in writing.

“Aggregate Commitments” means, as of any date of determination, the Commitments of all the Lenders. The initial amount of the Aggregate Commitments in effect on the Closing Date is \$375,000,000. The Aggregate Commitments may be increased or decreased from time to time as provided herein.

“Agreement” means this Credit Agreement.

“Alexander & Baldwin” means Alexander & Baldwin, Inc., a Hawaii corporation, incorporated in 1900.

“Alexander & Baldwin Credit Agreement” means that certain credit agreement dated as of August 5, 2011 among Alexander & Baldwin, as borrower, the lenders party thereto and First Hawaiian Bank, as administrative agent.

“Applicable Percentage” means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Commitment at such time. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or other documentation pursuant to which such Lender becomes a party hereto, as applicable. The Applicable Percentages shall be subject to adjustment as provided in Section 2.16.

“Applicable Rate” means with respect to the commitment fee payable pursuant to Section 2.09(a), the Eurodollar Rate, the Base Rate and the Letter of Credit Fee, from time to time, the following percentages per annum, based upon the Consolidated Leverage Ratio as set forth below:

Pricing Level	Consolidated Leverage Ratio	Commitment Fee	Eurodollar Rate	Base Rate	Letter of Credit Fee
1	< 1.50 to 1.0	0.15%	1.00%	0.00%	1.00%
2	> 1.50 to 1.0 but < 2.00 to 1.0	0.20%	1.25%	0.25%	1.25%
3	> 2.00 to 1.0 but < 2.50 to 1.0	0.25%	1.50%	0.50%	1.50%
4	> 2.50 to 1.0 but < 3.00 to 1.0	0.30%	1.75%	0.75%	1.75%
5	> 3.00 to 1.0 but < 3.50 to 1.0	0.35%	2.00%	1.00%	2.00%
6	> 3.50 to 1.0	0.40%	2.25%	1.25%	2.25%

The Applicable Rate in effect on the Closing Date through the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.01(c) for the first fiscal quarter ending at least six months after the Initial Funding Date shall initially be Pricing Level 3. Thereafter Applicable Rate shall be determined by reference to the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Agent pursuant to Section 6.01(c). Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.01(c); provided, however, that if such Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 6 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered in accordance with Section 6.01(c), whereupon the Applicable Rate shall be adjusted based upon the calculation of the Consolidated Leverage Ratio contained in such Compliance Certificate.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as a joint lead arranger and co-book manager.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit E-1 or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Agent.

“Audited Financial Statements” means the audited consolidated balance sheet of Matson Navigation and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of Matson Navigation and its Subsidiaries, including the notes thereto.

“Authorized Officer” means, with respect to any Loan Party, any officer of such Loan Party designated as an “Authorized Officer” for the purpose of this Agreement in a certificate executed by one of such Loan Party’s then existing Authorized Officers (as previously identified to the Agent). Any action taken under this Agreement or any other Loan Document on behalf of a Loan Party by any individual who on or after the Closing Date shall have been an Authorized Officer of such Loan Party and whom the Agent or any of the Lenders in good faith believes to be an Authorized Officer of such Loan Party at the time of such action shall be binding on such Loan Party even though such individual shall have ceased to be an Authorized Officer of such Loan Party, unless the Borrower or such Loan Party shall have provided the Agent with a certificate executed by one of such Loan Party’s then existing Authorized Officers (as previously identified to the Agent) indicating that such individual is no longer an “Authorized Officer.”

“Availability Period” means the period from and including the Initial Funding Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) the Eurodollar Rate set forth in clause (b) of the definition thereof plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Committed Loan that bears interest based on the Base Rate.

“Borrower” means (a) prior to the delivery of the Borrower Assignment and Assumption, Matson Navigation (provided, for the avoidance of doubt, that Matson Navigation shall not be the obligor of any Borrowing under this Agreement except pursuant to the Guaranty) and (b) upon the execution and delivery of the Borrower Assignment and Assumption and at all times thereafter, Matson.

“Borrower Assignment and Assumption” means the Borrower Assignment and Assumption dated as of the Initial Funding Date in the form of Exhibit G to be executed by Matson Navigation, Matson and the Agent.

“Borrower Materials” has the meaning specified in Section 6.01.

“Borrowing” means a Committed Borrowing or a Swing Line Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Agent’s Office is located and, if such day relates to any Eurodollar Loan, means any such day that is also a London Banking Day.

“Capital Assets” means all assets other than current assets, and shall not include any amounts in the CCF.

“Capitalized Lease Obligation” means, with respect to any Person, any rental obligation of such Person which, under GAAP in effect as of the Closing Date, is or will be required to be capitalized on the books of such Person, taken at the amount thereof accounted for as indebtedness (net of interest expense) in accordance with such principles.

“Cash Collateralize” means to pledge and deposit with or deliver to the Agent, for the benefit of one or more of the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Agent and the L/C Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support.

“CCF” means the capital construction fund created under Matson Navigation’s Capital Construction Fund Agreement with the United States through the Maritime Administrator.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et. seq.), and the regulations promulgated thereunder.

“CFC” means a controlled foreign corporation (as that term is defined in Section 957(a) of the Code).

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority) or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith by any Governmental Authority and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means (i) the acquisition by any “person” or “group” (as such terms are used in Sections 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934) of outstanding shares of voting stock of the Borrower representing more than 50% of voting control of the Borrower, provided, however, that the Restructuring Transactions, in and of themselves, shall not constitute a Change of Control, or (ii) at any time after the Spinoff, the failure of the Borrower to own 100% of the equity interests of Matson Navigation.

“Closing Date” means June 4, 2012.

“Code” means the Internal Revenue Code of 1986.

“Commitment” means, as to each Lender, its obligation to (a) make Committed Loans to the Borrower pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption or other documentation pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Committed Borrowing” means a borrowing consisting of simultaneous Committed Loans of the same Type and, in the case of Eurodollar Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Committed Loan” has the meaning specified in Section 2.01.

“Committed Loan Notice” means a notice of (a) a Committed Borrowing, (b) a conversion of Committed Loans from one Type to the other, or (c) a continuation of Eurodollar Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Compliance Certificate” means a certificate signed in the name of the Borrower by an Authorized Officer of the Borrower in substantially the form of Exhibit F.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated EBITDA” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Expense for such period, (ii) the provision for federal, state, local and foreign income taxes payable for such period, (iii) depreciation expense for such period, (iv) amortization expense for such period, (v) one-time expenses related to the Restructuring Transactions or the Spinoff; provided that the aggregate amount of expenses added back to Consolidated EBITDA pursuant to this clause (v) shall not exceed \$12,000,000 during the term of this Agreement and (vi) non-cash stock-based compensation; minus (b) to the extent included in the calculation of Consolidated Net Income, equity in earnings from unconsolidated Affiliates per GAAP; plus (c) cash distributions received during such period from unconsolidated Affiliates. For purposes of calculating Consolidated EBITDA for any period of four consecutive quarters, if during such period the Borrower or any Subsidiary shall have consummated (i) an Acquisition of a Person that upon such consummation constitutes a Material Subsidiary (including any such Acquisition structured as an asset purchase, merger or consolidation) or an Acquisition of a Material Line of Business, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such transaction occurred on the first day of such period; provided, that if the aggregate purchase price for any Acquisition is greater than or equal to \$25,000,000, Consolidated EBITDA shall only be calculated on a pro forma basis to the extent such pro forma calculations are based on audited financial statements or other financial statements reasonably satisfactory to the Required Lenders and (ii) a disposition of all or substantially all of the assets of a Material Subsidiary or of at least 50% of the equity interests of a Material Subsidiary or of a Material Line of Business, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such transaction occurred on the first day of the such period, so long as, in each case, such pro forma calculations are (x) made in accordance with Regulation S-X or (y) are otherwise acceptable to the Required Lenders.

“Consolidated Interest Expense” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, plus (b) the portion of rent expense with respect to such period under capital leases that is treated as interest in accordance with GAAP.

“Consolidated Interest Coverage Ratio” means, at any time of determination thereof, the ratio of (i) Consolidated EBITDA for the most recently completed four quarter period to (ii) Consolidated Interest Expense for such period.

“Consolidated Leverage Ratio” means, as at any time of determination thereof, the ratio of (i) all Debt of the Borrower and Subsidiaries on a consolidated basis as of such time to (ii) Consolidated EBITDA for the most recently completed four fiscal quarters.

“Consolidated Net Income” means, for any period, the consolidated net income of the Borrower and its Subsidiaries (excluding, to the extent included in such consolidated net income (a) non-cash gains or losses during such period from the write-up or write-down of assets and (b) income or losses during such period from discontinued operations) as determined in accordance with GAAP.

“Consolidated Tangible Assets” means, as of any date, total assets (excluding treasury stock, unamortized debt discount and expense, goodwill, trademarks, trade names, patents, deferred charges and other intangible assets) of the Borrower and its Subsidiaries on a consolidated basis, as determined in accordance with GAAP.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Debt” means, as to any Person at the time of determination thereof without duplication, (a) any indebtedness of such Person (i) for borrowed money, including commercial paper and revolving credit lines, (ii) evidenced by bonds, debentures or notes or otherwise representing extensions of credit, whether or not representing obligations for borrowed money (except trade accounts payable arising in the ordinary course of business) or (iii) for the payment of the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, regardless of when such liability or other obligation is due and payable, (b) Capitalized Lease Obligations of such Person, (c) direct or contingent obligations under standby letters of credit (and substantially similar instruments such as bank guaranties), (d) Guarantees, assumptions and endorsements by such Person (other than endorsements of negotiable instruments for collection in the ordinary course of business) of Debt of another Person of the types described in clauses (a), (b) and (c) hereof, and (e) Debt of another Person of the types described in clauses (a), (b) and (c) hereof, that is secured by Liens on the property or other assets of such Person. Notwithstanding the forgoing, “Debt” shall not include (i) to the extent not exceeding \$10,000,000 at any time outstanding, unsecured contingent reimbursement obligations under standby letters of credit (and substantially similar instruments such as bank guaranties) or (ii) a Guarantee of Matson Navigation’s trade accounts receivable purchased or held by the CCF.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Agent, the L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Agent, the L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Agent or the Borrower, to confirm in writing to the Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to the Borrower, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any state of the United States or the District of Columbia.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Eligible Business Line” means any business engaged in as of the Closing Date by Matson Navigation or any of its Subsidiaries or any business reasonably related thereto (but in no event an airline).

“Environmental and Safety Laws” means all Federal, state and local laws, regulations and ordinances, relating to the discharge, handling, disposition or treatment of Hazardous Materials and other substances or the protection of the environment or of employee health and safety, including, without limitation, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. Section 1901 et. seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et. seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et. seq.), the Clean Air Act (42 U.S.C. Section 7401 et. seq.), the



Toxic Substances Control Act (15 U.S.C. Section 2601 et. seq.), the Occupational Safety and Health Act (29 U.S.C. Section 651 et. seq.) and the Emergency Planning and Community Right-To-Know Act (42 U.S.C. Section 11001 et. seq.).

“Environmental Liabilities and Costs” means as to any Person, all liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages, treble damages, contribution, cost recovery, costs and expenses (including all fees, disbursements and expenses of counsel, expert and consulting fees, and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand, by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, permit, order or agreement with any Federal, state or local Governmental Authority or other Person, arising from environmental, health or safety conditions, or the release or threatened release of a contaminant, pollutant or Hazardous Material into the environment, resulting from the operations of such Person or its subsidiaries, or breach of any Environmental and Safety Law or for which such Person or its Subsidiaries is otherwise liable or responsible.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any corporation which is a member of the same controlled group of corporations as the Borrower within the meaning of section 414(b) of the Code, or any trade or business which is under common control with the Borrower within the meaning of section 414(c) of the Code.

“Eurodollar Loan” means a Committed Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”

“Eurodollar Rate” means:

(a) for any Interest Period with respect to a Eurodollar Loan, the rate per annum equal to (i) the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, if such rate is not available at such time for any reason, the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by Bank of America’s London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Subsidiary” means (a) each CFC and (b) each U.S. Foreign Holdco; provided, that in each case, such Person has not issued or guaranteed any notes issued pursuant to the 2005 Note Purchase Agreement or the 2012 Note Purchase Agreement.

“Excluded Taxes” means, any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or 3.01(c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing Credit Agreement” means that certain Credit Agreement, dated as of August 5, 2011, among Matson Navigation, as the Borrower, First Hawaiian Bank, as administrative agent, and the lenders party thereto.

“Existing Letters of Credit” means those letters of credit set forth on Schedule 1.01.

“Existing Note Purchase Agreement Lien” means the Lien existing on the Closing Date that secures only the obligations incurred under the notes issued prior to the Closing Date pursuant to the 2005 Note Purchase Agreement, which such Lien is anticipated to be released on the effective date of the 2012 Note Purchase Agreement.

“FATCA” means Sections 1471 through 1474 of the Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Agent.

“Fee Letter” means the administrative agent fee letter agreement, dated May 1, 2012, among Matson Navigation, the Agent and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“Foreign Lender” means a Lender that is not a U.S. Person.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the Financial Accounting Standards Board Accounting Standards Codification or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, without duplication, any obligation, contingent or otherwise, of any Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation of any other Person (the primary obligor) in any manner, directly or indirectly, and including any obligation: (a) to make any loan, advance or capital contribution, or for the purchase of any property from, any Person, in each case for the purpose of enabling such Person to maintain working capital, net worth or any other balance sheet condition or to pay debts, dividends or expenses except for advances, deposits and initial payments made in the usual and ordinary course of business for the purchase or acquisition of property or services; (b) to purchase materials, supplies or other property or services if such obligation requires that payment for such materials, supplies or other property or services be made regardless of whether or not delivery of such materials, supplies or other property or services is ever made or tendered; (c) to rent or lease (as lessee) any real or personal property if such obligation is absolute and unconditional under conditions not customarily found in commercial leases then in general use; or (d) of any partnership or joint venture in which such Person is a general partner or joint venturer if such obligation is not expressly non-recourse to such Person; but excluding (i) completion guarantees issued in connection with a real estate development project to the extent contingent and not constituting a direct or indirect obligation to repay Debt, (ii) obligations under environmental indemnification agreements and (iii) a guaranty of Matson Navigation’s trade accounts receivable purchased or held by the CCF.

“Guarantors” means, collectively, (a) each Material Domestic Subsidiary of the Borrower identified as a “Guarantor” on the signature pages to the Guaranty, (b) each Person that joins the Guaranty as a Guarantor pursuant to Section 6.08 or otherwise and (c) the successors and permitted assigns of the foregoing; provided, however, that no Excluded Subsidiary shall be a Guarantor. A Guarantor shall be released from its Guaranty pursuant to, and in accordance with, the terms hereof or the Guaranty.

“Guaranty” means the Guaranty, dated as of the Initial Funding Date, executed by the Guarantors in favor of the Agent for the benefit of the holders of the Obligations.

“Hazardous Materials” means (a) any material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances” or any other formulations intended to define, list or classify substances by reason of their deleterious properties, (b) any oil, petroleum or petroleum derived substance, (c) any flammable substances or explosives, (d) any radioactive materials, (e) asbestos in any form, (f) electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million, (g) pesticides or (h) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental agency or authority or which may or could pose a hazard to the health and safety of persons in the vicinity thereof.

“Hostile Acquisition” means any Acquisition that has not been approved by the board of directors or other governing body of the applicable entity as contemplated by Section 5.14(b).

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Initial Funding Date” means the first Business Day following the Closing Date that all the conditions precedent in Section 4.03 are satisfied or waived in accordance with Section 10.01.

“Interest Payment Date” means, (a) as to any Eurodollar Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurodollar Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the first Business Day after the end of each March, June, September and December and the Maturity Date.

“Interest Period” means, as to each Eurodollar Loan, the period commencing on the date such Eurodollar Loan is disbursed or converted to or continued as a Eurodollar Loan and ending on the date one week, two weeks or one, two, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor the L/C Issuer and relating to such Letter of Credit.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means, as the context requires, (a) First Hawaiian Bank in its capacity as issuer of Letters of Credit hereunder (including certain Existing Letters of Credit), (b) Bank of America, N.A. in its capacity as issuer of Letters of Credit hereunder (including certain Existing Letters of Credit), and (c) any successor issuer of Letters of Credit hereunder. The term “L/C Issuer” when used with respect to a Letter of Credit or the L/C Obligations relating to a Letter of Credit shall refer to the L/C Issuer that issued such Letter of Credit.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning specified in the introductory paragraph hereto and, unless the context requires otherwise, includes the Swing Line Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

“Letter of Credit” means any letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit. Notwithstanding anything to the contrary contained herein, a letter of credit issued by an L/C Issuer other than Bank of America shall not be a “Letter of Credit” for purposes of the Loan Documents until such time as the Agent has been notified of the issuance thereof by the applicable L/C Issuer and has confirmed with the L/C Issuer that there exists adequate availability under the Aggregate Commitments to issue such letter of credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(i).

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$100,000,000 and (b) the Aggregate Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments.

“Lien” means any mortgage, deed of trust, pledge, security interest, encumbrance, deposit arrangement, lien (including any lien securing any Capitalized Lease Obligation) or charge of any kind (including any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Committed Loan or a Swing Line Loan.

“Loan Documents” means this Agreement, each Note, each Issuer Document, the Borrower Assignment and Assumption, the Guaranty, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15 and the Fee Letter.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, on the business, condition (financial or otherwise) or operations of the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document; or (c) a material adverse effect on the material rights and remedies of the Lenders, which material adverse effect was not caused by any Lender. Notwithstanding anything to the contrary contained herein, for the avoidance of doubt, it is understood and agreed that none of the Restructuring Transactions and the initial incurrence of Debt under this Agreement and the 2012 Note Purchase Agreement (as in effect on the Closing Date), the A&B Capital Contribution or the Spinoff, individually or collectively, shall be deemed to constitute a Material Adverse Effect.

“Material Domestic Subsidiary” means any Domestic Subsidiary of the Borrower (other than a U.S. Foreign Holdco) that accounts for, as of the most recently ended four fiscal quarter period of the Borrower, 5% or more of Consolidated EBITDA of the Borrower and its Subsidiaries for the most recently ended four fiscal quarter period of the Borrower.

“Material Line of Business” means a line of business or an operating division that accounts for, as of the most recently ended four fiscal quarter period of the Borrower, 5% or more of Consolidated EBITDA of the Borrower and its Subsidiaries for the most recently ended four fiscal quarter period of the Borrower.

“Material Subsidiary” means (a) any Guarantor and (b) any Subsidiary of the Borrower that accounts for, as of the most recently ended four fiscal quarter period of the Borrower, 5% or more of Consolidated EBITDA of the Borrower and its Subsidiaries for the most recently ended four fiscal quarter period of the Borrower.

“Matson” means, Matson, Inc., a Hawaii corporation (originally known as Alexander & Baldwin Holdings, Inc., to be renamed Matson, Inc. after completion of the Spinoff).

“Matson Navigation” has the meaning specified in the introductory paragraph hereto.

“Maturity Date” means the fifth anniversary of the Initial Funding Date. If such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Minimum Collateral Amount” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 103% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.15(a)(i), (a)(ii) or (a)(iii), an amount equal to 103% of the Outstanding Amount of all L/C Obligations, and (iii) otherwise, an amount equal to 103% of the stated amount of the applicable Letter of Credit.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any Plan which is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (ii) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit C.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising under any Loan Document and including interest and fees that accrue after the commencement by or against the Borrower or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming a Loan Party as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means (i) with respect to Committed Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Committed Loans and Swing Line Loans, as the case may be, occurring on such date; and (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any “employee pension benefit plan” (as such term is defined in section 3 of ERISA) which is or has been established or maintained, or to which contributions are or have been made, by the Borrower or any ERISA Affiliate.

“Platform” has the meaning specified in Section 6.01.

“Priority Debt” means, at any time of determination thereof and without duplication, (a) Debt of the Borrower or Matson Navigation secured by any Lien (including, without limitation, all Title XI Debt and all Debt secured by marine assets, in each case whether full recourse or limited recourse) and (b) all Debt secured by any Lien (including, without limitation, all Title XI Debt and all Debt secured by a Lien on marine assets, in each case whether full recourse or limited recourse) and all unsecured Debt of Subsidiaries of the Borrower (other than unsecured Debt of Guarantors); provided, however, that Priority Debt shall not include (i) Debt owing from any Subsidiary to the Borrower or any other Subsidiary, (ii) any of the Obligations or (iii) any of the obligations of the Borrower or any Subsidiary under the 2005 Note Purchase Agreement or the 2012 Note Purchase Agreement, so long as the Obligations are secured on an equal and ratable basis pursuant to Section 6.03(ii); provided further, for purposes of clarification, (A) the obligations of the Borrower or any Subsidiary under the 2005 Note Purchase Agreement shall constitute Priority Debt so long as they are secured by the Existing Note Purchase Agreement Lien and the Obligations are not equally and ratably secured by such Lien and (B) the obligations of the Borrower under the 2005 Note Purchase Agreement and the 2012 Note Purchase Agreement shall not constitute Priority Debt solely as a result of such obligations being secured (without the Obligations being equally and ratably secured) by cash collateral in an amount not to exceed the amount of Cash Collateral being provided by the Borrower and its Subsidiaries pursuant to Section 2.15.

“Public Lender” has the meaning specified in Section 6.01.

“Recipient” means (a) the Agent, (b) any Lender, (c) the L/C Issuer and (d) any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, as applicable.

“Register” has the meaning specified in Section 10.06(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Committed Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders (except that the amount of any participation in any Swing Line Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that has not been reallocated to and funded by another Lender shall be deemed to be “held” by the Lender that is the Swing Line Lender or L/C Issuer, as the case may be, in making such determination).

“Responsible Officer” means each of the treasurer, the chief financial officer and chief legal officer of a Loan Party and any other officer of a Loan Party whose responsibilities include monitoring such Loan Party’s compliance with the provisions of this Agreement and the other Loan Documents to which it is a party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payments” has the meaning specified in Section 7.08.

“Restructuring Transactions” means the publicly announced transactions pursuant to which the businesses of Alexander & Baldwin will be split into two independent publicly traded companies, including without limitation the A&B Capital Contribution and the transactions contemplated by the Separation Agreement; provided, however, notwithstanding anything to the contrary contained herein, the Spinoff shall not constitute a part of the Restructuring Transactions.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. and any successor thereto.

“Sanction(s)” means any economic sanction administered or enforced by OFAC.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Separation Agreement” means the Separation and Distribution Agreement, to be dated on or about June 8, 2012, between Alexander & Baldwin Holdings, Inc. (to be renamed Matson, Inc.) and A&B II, Inc., and shall include the schedules and exhibits relating thereto.

“Spinoff” means the publicly announced transaction pursuant to which the capital stock of A&B II, Inc. will be distributed to the public stockholders of Matson within two (2) Business Days following the Initial Funding Date.

“Subsidiary” means, as to any Person, any company, whether operating as a corporation, joint venture, partnership, limited liability company or other entity, which is consolidated with such Person in accordance with GAAP. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$50,000,000 and (b) the Aggregate Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Commitments.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Title XI Debt” means all Debt of the Borrower or any Subsidiary that is guaranteed by the United States pursuant to 46 USC Chapter 537.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Type” means, with respect to a Committed Loan, its character as a Base Rate Loan or a Eurodollar Loan.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“U.S. Foreign Holdco” means any Domestic Subsidiary, substantially all of the assets of which consist of equity interests of one or more Foreign Subsidiaries.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(III).

“Withholding Agent” means the Borrower, any Loan Party and the Agent.

“2005 Note Purchase Agreement” means that certain Amended and Restated Note Agreement dated as of May 19, 2005 (as may be supplemented, amended, amended and restated or replaced, including, without limitation, by an amendment and restatement as reflected by the 2012 Note Purchase Agreement) among Matson Navigation and the holders of the notes issued thereunder.

“2012 Note Purchase Agreement” means that certain Note Agreement dated as of June 4, 2012 (as may be supplemented, amended, amended and restated or replaced) among Matson and the holders of the notes issued thereunder.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any articles of incorporation, bylaws or similar organizational documents) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) All covenants hereunder shall be given independent effect so that if a particular action or condition is prohibited by any one of such covenants, the fact that it would be permitted by an exception to, or otherwise be in compliance within the limitations of, another covenant shall not (i) avoid the occurrence of a Default if such action is taken or such condition exists or (ii) in any way prejudice an attempt by the Agent to prohibit, through equitable action or otherwise the taking of any action by the Borrower or any Subsidiary that would result in a Default. For the avoidance of doubt, if a particular action or condition is expressly permitted by an exception to a covenant and is not expressly

prohibited by another provision in the same covenant, the taking of such action or the existence of such condition shall not result in a Default under such covenant.

**1.03 Accounting Terms.** (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, (A) until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) until so amended, the Borrower shall provide to the Agent and the Lenders financial statements and other documents reasonably requested by the Agent hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

**1.04 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.05 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

**1.06 Letter of Credit Amounts.** Unless otherwise specified herein, the amount of an outstanding Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

## ARTICLE II.

### THE COMMITMENTS AND CREDIT EXTENSIONS

**2.01 Committed Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Committed Loan") in Dollars to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Commitment; provided, however, that after giving effect to any Committed Borrowing, (i) the Total Outstandings shall not exceed the Aggregate Commitments, and (ii) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed the amount of such Lender's Commitment. Subject to the terms and conditions hereof, the Borrower may borrow Committed Loans under this Section 2.01, repay or prepay such Committed Loans under Section 2.05, reborrow such Committed Loans and borrow other Committed Loans under this Section 2.01. Committed Loans may be Base Rate Loans or Eurodollar Loans, as further provided herein.

#### **2.02 Borrowings, Conversions and Continuations of Committed Loans.**

(a) Each Committed Borrowing, each conversion of Committed Loans from one Type to the other, and each continuation of Eurodollar Loans shall be made upon the Borrower's irrevocable notice to the Agent, which may be given by telephone. Each such notice must be received by the Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of Eurodollar Loans or any conversion to or continuation of Eurodollar Loans or of any conversion of Eurodollar Loans to Base Rate Loans and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Agent of a written Committed Loan Notice, appropriately completed and signed by an Authorized Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Committed Borrowing, a conversion of Committed Loans from one Type to the other, or a continuation of Eurodollar Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Committed Loans to be borrowed, converted or continued, (iv) the Type of Committed Loans to be borrowed or to which existing Committed Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Committed Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation of a Eurodollar Loan, then the applicable Committed Loan shall be made as, or converted to, Base Rate Loans, unless such Committed Loan was a Eurodollar Loan, in which case such Committed Loan shall be continued as a Eurodollar Loan with an Interest Period of one month. Any such automatic conversion to a Base Rate Loan and any such continuation of a Eurodollar Loan, in either case, shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Loans in any such Committed Loan Notice, but the Borrower fails to specify an Interest Period for such Committed Loan or continuation of a Eurodollar Loan, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Eurodollar Loans described in the preceding subsection. In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Loan available to the Agent in immediately available funds at the Agent's Office not later than 10:00 a.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Sections 4.01 and 4.03), the Agent shall make all funds so received available to the Borrower in like funds as received by the Agent either by (i) crediting the account of the Borrower on the books of First Hawaiian Bank with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Borrower; provided, however, that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Loans without the consent of the Required Lenders.

(d) The Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Committed Borrowings, all conversions of Committed Loans from one Type to the other, and all continuations of Committed Loans as the same Type, there shall not be more than ten Interest Periods in effect at any single time with respect to Eurodollar Loans.

### **2.03 Letters of Credit.**

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Initial Funding Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrower or any of its Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings shall not exceed the Aggregate Commitments, (y) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the forgoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Initial Funding Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date; provided that Letters of Credit with an expiry date after the Letter of Credit Expiration Date may be issued (but the L/C Issuer shall have no obligation to issue) so long as the Borrower agrees to Cash Collateralize such Letter of Credit in an amount equal to at least 103% of the face amount of such Letter of Credit prior to the Letter of Credit Expiration Date in accordance with the terms of this Agreement. The Borrower hereby agrees that on or before the Letter of Credit Expiration Date it shall Cash Collateralize any Letter of Credit existing and not expiring on the Letter of Credit Expiration Date in an amount equal to at least 103% of the face amount of such Letter of Credit (and in the event the Borrower fails to do so, the Agent may require each Lender to fund its participation interest in an amount equal to such Lender's Applicable Percentage of the outstanding Letters of Credit for purposes of Cash Collateralizing the Letters of Credit). For the avoidance of doubt, the parties hereto agree that the obligations of the Lenders hereunder to reimburse the L/C Issuer for any Unreimbursed Amount with respect to any Letter of Credit shall terminate on the Maturity Date with respect to drawings occurring after that date.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any



restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) such Letter of Credit is to be denominated in a currency other than Dollars;  
or

(D) any Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Agent) in the form of a Letter of Credit Application, appropriately completed and signed by an Authorized Officer of the Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application be received by the L/C Issuer and the Agent not later than 11:00 a.m. at least three Business Days (or such later date and time as the Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the stated amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the L/C Issuer and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Agent (by telephone or in writing) that the Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Lender, the Agent or the Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or the applicable Subsidiary or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Agent that the Required Lenders have elected not to permit such extension or (2) from the Agent, any Lender or the Borrower that one or more of the

applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an “Auto-Reinstatement Letter of Credit”). Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the “Non-Reinstatement Deadline”), the L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Reinstatement Deadline (A) from the Agent that the Required Lenders have elected not to permit such reinstatement or (B) from the Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the L/C Issuer not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Agent a true and complete copy of such Letter of Credit or amendment and any other Issuer Documents related thereto.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Borrower and the Agent thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an “Honor Date”), the Borrower shall reimburse the L/C Issuer through the Agent in an amount equal to the amount of such drawing; provided that the Borrower has received notice of such payment by 9:00 a.m. on such Honor Date, otherwise the Borrower shall make such payment not later than 11:00 a.m. on the following Business Day (together with interest thereon). If the Borrower fails to so reimburse the L/C Issuer by such time, the Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Lender’s Applicable Percentage thereof. In such event, and in lieu of the obligation of the Borrower to reimburse the L/C Issuer as provided in the two immediately preceding sentences, the Borrower shall be deemed to have requested a Committed Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Agent’s Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender’s payment to the Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Committed Loan or its L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender’s Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender’s obligation to make Committed Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender’s obligation to make Committed Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender’s Committed Loan included in the relevant Committed Borrowing or L/C

Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations by the Lenders.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Agent), the Agent will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Agent.

(ii) If any payment received by the Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subsidiary.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (viii) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower and any applicable Subsidiary of the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower and any applicable Subsidiary of the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower or such Subsidiary which the Borrower or such Subsidiary proves were caused by the L/C Issuer's

willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary. The L/C Issuer shall provide to the Agent a list of outstanding Letters of Credit (together with type, amounts and denominated currency) issued by it on a monthly basis.

(g) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(h) Applicability of ISP and UCP. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer required under any law or practice that is required to be applied to any Letter of Credit, including the law of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) Letter of Credit Fees. The Borrower shall pay to the Agent for the account of each Lender in accordance, subject to Section 2.16, with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand, (ii) computed on a quarterly basis in arrears and (iii) computed for the actual number of days that such Letters of Credit are outstanding during the applicable quarter. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each issuance or amendment of a Letter of Credit, at a rate and at the times separately agreed between the Borrower and the L/C Issuer. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

#### **2.04 Swing Line Loans.**

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender agrees, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, to make loans (each such loan, a "Swing Line Loan") to the Borrower from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit; provided, however, that (i) after giving effect to any Swing Line Loan, (A) the Total Outstandings shall not exceed the Aggregate Commitments, and (B) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, (ii) that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan and (iii) the Swing Line Lender shall not be under any obligation to make any Swing Line Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Prior to a refinancing of a Swing Line Loan or the funding of a risk participation in Swing Line Loans, in either case, pursuant to Section 2.04(c), it is understood and agreed that the outstanding Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Committed Loans and L/C Obligations of the Swing Line Lender, may exceed the amount of such Lender's Commitment. Subject to the other terms and conditions hereof, the Borrower may borrow Swing Line Loans under this Section 2.04, repay or prepay such Swing Line Loans, reborrow such Swing Line Loans and borrow other Swing Line Loans under this Section 2.04. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Agent not later than 10:00 a.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Agent of a written Swing Line Loan Notice, appropriately completed and signed by an Authorized Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Agent (by telephone or in writing) that the Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Agent (including at the request of any Lender) prior to 11:00 a.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing

Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 12:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding (which Base Rate Loans shall be used to refinance such Swing Line Loans). Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to the Agent in immediately available funds (and the Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Agent's Office not later than 10:00 a.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Agent shall remit the funds so received to the Swing Line Lender. To the extent that a Swing Line Loan has been refinanced with a Borrowing of Base Rate Loans pursuant to this Section 2.04(c)(i), such Swing Line Loan shall be deemed repaid for all purposes herein.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Committed Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Committed Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Committed Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

## 2.05 Prepayments.

(a) The Borrower may, upon notice to the Agent, at any time or from time to time voluntarily prepay Committed Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of Eurodollar Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of

Eurodollar Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Committed Loans to be prepaid and, if Eurodollar Loans are to be prepaid, the Interest Period(s) of such Loans. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If the Borrower gives a prepayment notice, then the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, any notice of prepayment given in connection with a notice of termination of the Committed Loans given by the Borrower may state that such prepayment notice is conditioned upon the effectiveness of other credit facilities or capital raising, in which case such notice may (subject to compliance by the Borrower with the requirements of Section 3.05) be revoked by the Borrower (by notice to the Agent on or prior to the specified effective date) if such condition is not satisfied. Any prepayment of a Eurodollar Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.16, each such prepayment shall be applied to the Committed Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Outstandings at any time exceed the Aggregate Commitments, the Borrower shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Loans the Total Outstandings exceed the Aggregate Commitments then in effect.

## **2.06 Termination or Reduction of Commitments.**

(a) The Borrower may, upon notice to the Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments and (iv) if, after giving effect to any reduction of the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Commitments, such Sublimit shall be automatically reduced by the amount of such excess; provided, any notice of termination of the Aggregate Commitments given by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or capital raising, in which case such notice may be revoked by the Borrower (by notice to the Agent on or prior to the specified effective date) if such condition is not satisfied. The Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

(b) If the Initial Funding Date has not occurred on or prior to the date that is ninety (90) days following the Closing Date, the Aggregate Commitments shall be automatically terminated on the ninety-first (91<sup>st</sup>) day following the Closing Date.

## **2.07 Repayment of Loans.**

(a) The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of Committed Loans outstanding on such date.

(b) Except to the extent previously refinanced with a Base Rate Loan pursuant to Section 2.04(c), the Borrower shall repay each Swing Line Loan on the earlier to occur of (i) the date ten Business Days after such Loan is made and (ii) the Maturity Date.

## **2.08 Interest.**

(a) Subject to the provisions of subsection (b) below, (i) each Eurodollar Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in clauses (b)(i) and (b)(ii) above), the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and, to the extent permitted by Law, after the commencement of any proceeding under any Debtor Relief Law.

**2.09 Fees.** In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(a) Commitment Fee. The Borrower shall pay to the Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Aggregate Commitments exceed the sum of (i) the Outstanding Amount of Committed Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.16. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted towards or considered usage of the Aggregate Commitments for purposes of determining the commitment fee. The commitment fee shall accrue at all times during the period commencing on the Closing Date and ending on the last day of the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees. The Borrower shall pay, or cause to be paid, to the Arranger and the Agent for their own accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

**2.10 Computation of Interest and Fees; Retroactive Adjustment of Applicable Rate.**

(a) All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(i) or 2.08(b) or under Article VIII. The Borrower's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

**2.11 Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Agent in the ordinary course of business. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrower shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and the Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error.

**2.12 Payments Generally; Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 11:00 a.m. on the date specified herein. The Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 11:00 a.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to the proposed date of any Committed Borrowing of Eurodollar Loans (or, in the case of any Committed Borrowing of Base Rate Loans, prior to 12:00 p.m. on the date of such Committed Borrowing) that such Lender will not make available to the Agent such Lender's share of such Committed Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Committed Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Agent, then the applicable Lender and the Borrower severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Committed Borrowing to the Agent, then the amount so paid shall constitute such Lender's Committed Loan included in such Committed Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Agent.

(ii) Payments by Borrower; Presumptions by Agent. Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice of the Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

**2.13 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Committed Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Committed Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.15, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against any Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

#### **2.14 Increases of Aggregate Commitments.**

The Borrower shall have the right, upon at least five Business Days' prior written notice to the Agent, to increase the Aggregate Commitments by up to \$75,000,000 in the aggregate in one or more increases, at any time prior to the date that is three months prior to the Maturity Date, subject, however, in any such case, to satisfaction of the following conditions precedent:



- (a) the Aggregate Commitments shall not exceed \$450,000,000 without the consent of the Required Lenders;
- (b) no Default shall have occurred and be continuing on the date on which such increase is to become effective;
- (c) the representations and warranties set forth in Article V shall be true and correct in all material respects (or, if such representation or warranty is qualified by materiality or Material Adverse Effect, it shall be true and correct in all respects as drafted) on and as of the date on which such increase is to become effective, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or, if such representation or warranty is qualified by materiality or material adverse effect, it shall be true and correct in all respects as drafted) as of such earlier date;
- (d) such increase shall be in a minimum amount of \$10,000,000, or such lesser amount equal to the remaining available increase amount, and in integral multiples of \$1,000,000 in excess thereof;
- (e) such requested increase shall only be effective upon receipt by the Agent of (i) additional Commitments in a corresponding amount of such requested increase from either existing Lenders and/or one or more other institutions that qualify as Eligible Assignees (it being understood and agreed that no existing Lender shall be required to provide an additional Commitment) and (ii) documentation from each institution providing an additional Commitment evidencing its additional Commitment and its obligations under this Agreement in form and substance acceptable to the Agent;
- (f) the Agent shall have received all documents (including resolutions of the board of directors of the Loan Parties and opinions of counsel to the Loan Parties) it may reasonably request relating to the corporate or other necessary authority for such increase and the validity of such increase in the Aggregate Commitments, and any other matters relevant thereto, all in form and substance reasonably satisfactory to the Agent; and
- (g) if any Committed Loans are outstanding at the time of the increase in the Aggregate Commitments, the Borrower shall, if applicable, prepay one or more existing Committed Loans (such prepayment to be subject to Section 3.05) in an amount necessary such that after giving effect to the increase in the Aggregate Commitments, each Lender will hold its pro rata share (based on its Applicable Percentage of the increased Aggregate Commitments) of outstanding Committed Loans.

## 2.15 Cash Collateral.

- (a) Certain Credit Support Events. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrower shall be required to provide Cash Collateral pursuant to Section 8.02(c), or (iv) there shall exist a Defaulting Lender, the Borrower shall immediately (in the case of clause (iii) above) or within one Business Day (in all other cases) following any request by the Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender). For purposes of clarification, if Fronting Exposure remains after giving effect to Section 2.16(a)(iv), the Agent shall first request that the Defaulting Lender deliver to the Agent Cash Collateral in an amount sufficient to cover the remaining Fronting Exposure and, second, to the extent Fronting Exposure remains after giving effect to Cash Collateral provided by the Defaulting Lender, the Agent shall request that the Borrower deliver to the Agent Cash Collateral in an amount sufficient to cover the remaining Fronting Exposure. Such Cash Collateralization may be effected by means of a Borrowing of Committed Loans or a funding of participation interests (assuming for such purposes that the Letters of Credit that will survive the Maturity Date had been fully drawn on the Letter of Credit Expiration Date).
- (b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. As of the Initial Funding Date, the Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Agent, for the benefit of the Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the relevant Defaulting Lender and, to the extent Fronting Exposure remains thereafter, the Borrower will promptly upon demand by the Agent, pay or provide to the Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. The relevant Defaulting Lender or, to the extent not paid by the relevant Defaulting Lender, the Borrower, shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.
- (c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.04, 2.05, 2.16 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.
- (d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vi)) or (ii) the Agent's and the L/C Issuer's good faith determination that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of the Borrower shall not be released during the continuance of a Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the L/C Issuer, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations. Between a Defaulting Lender and the Borrower as to any particular Cash Collateral, the Cash Collateral furnished by the Borrower shall be released prior to any Cash Collateral furnished by the Defaulting Lender

## 2.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.15; *fourth*, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; *fifth*, if so determined by the Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.15; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.15.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause any Non-Defaulting Lender's share of the Total Outstandings to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.15.

(b) Defaulting Lender Cure. If the Borrower, the Agent, the Swing Line Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Committed Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Committed Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon

that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) Notification of Defaulting Lender. Upon becoming aware that a Lender is a Defaulting Lender, the Agent shall reasonably promptly notify the Borrower that such Lender is a Defaulting Lender.

### ARTICLE III.

#### TAXES, YIELD PROTECTION AND ILLEGALITY

##### 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable laws. If any applicable laws (as determined in the good faith discretion of the applicable Withholding Agent) require the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Withholding Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Withholding Agent shall withhold or make such deductions as are determined by the Withholding Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Withholding Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made. The Borrower shall provide the Agent with at least ten days prior written notice prior to the date that any Loan Party makes any deduction or payment for Taxes in accordance with this subsection (ii).

(iii) If any Withholding Agent shall be required by any applicable laws other than the Code to withhold or deduct any Taxes from any payment, then (A) the Withholding Agent, as required by such laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Withholding Agent, to the extent required by such laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications. (i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority, except in each case, to the extent resulting from the gross negligence or willful misconduct of such Recipient. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the L/C Issuer (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. Each of the Loan Parties shall, and does hereby, jointly and severally indemnify the Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Borrower or the Agent, as the case may be, after any payment of Taxes by the Borrower or by the Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Agent or the Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such

payment, a copy of any return required by laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit D-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN; or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-2 or Exhibit D-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so.

(iv) For purposes of this Section 3.01(e), the term "Lender" includes any L/C Issuer.

(f) Treatment of Certain Refunds. Unless required by applicable laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient determines that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

**3.02 Illegality.** If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Committed Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Agent, (i) any obligation of such Lender to make or continue Eurodollar Loans or to convert Base Rate Loans to Eurodollar Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender, shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Eurodollar Rate component of the Base Rate), either (i) if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, on the last day of the Interest Period therefor, or (ii) if such Lender may not lawfully continue to maintain such Eurodollar Loans to the last day of the Interest Period therefor, on the last day that such Lender may lawfully continue to maintain such Eurodollar Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

**3.03 Inability to Determine Rates.** If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans of the type covered by the Agent's notice shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Loans or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein.

#### **3.04 Increased Costs.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Committed Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity

requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than three months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 Business Days' prior notice (with a copy to the Agent) of such additional interest from such Lender. If a Lender fails to give notice Business Days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 Business Days from receipt of such notice.

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurodollar Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow or continue a Eurodollar Loan or to convert any Base Rate Loan to a Eurodollar Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss (excluding any loss of anticipated profits) or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to take such actions, including, designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender or the L/C Issuer, such actions, designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender or the L/C Issuer, as the case may be, (as compared to actions taken by such Lender with respect to other similarly situated borrowers). The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival.** All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Agent.

## **ARTICLE IV.**

## CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

**4.01 Conditions to Effectiveness.** This Agreement shall become effective upon satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of Matson Navigation, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Agent and each of the Lenders:

(i) an executed counterpart of this Agreement;

(ii) such certificates of resolutions or other action, incumbency certificates with specimen signatures and/or other certificates of the secretary or assistant secretary of Matson Navigation as the Agent may reasonably require evidencing the identity, authority and capacity of each Authorized Officer thereof authorized to act as an Authorized Officer in connection with this Agreement;

(iii) such documents and certifications as the Agent may reasonably require to evidence that Matson Navigation is in good standing in its jurisdiction of incorporation;

(iv) favorable opinions of Gibson, Dunn & Crutcher LLP and Cades Schutte LLP, addressed to the Agent and each Lender, as to such matters concerning Matson Navigation and this Agreement as the Lenders may reasonably request;

(v) a certificate of a Responsible Officer of Matson Navigation either (A) attaching copies of all documents evidencing other necessary actions, approval or consents with respect to this Agreement or (B) stating that no such actions, approvals or consents are so required; and

(vi) a certificate signed by a Responsible Officer of Matson Navigation certifying (A) the representations and warranties of Matson Navigation contained in Article V, or which are contained in any document furnished at any time under or in connection herewith, are true and correct in all material respects (or, if such representation or warranty is qualified by materiality or Material Adverse Effect, it is true and correct in all respects as drafted) on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, if such representation or warranty is qualified by materiality or material adverse effect, it is true and correct in all respects as drafted) as of such earlier date, (B) no Default exists and (C) that there has been no event or circumstance since December 31, 2011 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) Any fees required to be paid under the Fee Letter to the Agent, the Arranger or the Lenders on or before the Closing Date shall have been paid.

(c) Unless waived by the Agent, Matson Navigation shall have paid all fees, charges and disbursements of counsel to the Agent (directly to such counsel if requested by the Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Closing Date (provided that such estimate shall not thereafter preclude a final settling of accounts between Matson Navigation and the Agent).

The Agent shall notify Matson Navigation in writing when this Agreement becomes effective. Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02 Conditions to all Credit Extensions.** The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type, or a continuation of Eurodollar Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or, if such representation or warranty is qualified by materiality or Material Adverse Effect, it shall be true and correct in all respects as drafted) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or, if such representation or warranty is qualified by materiality or material adverse effect, it shall be true and correct in all respects as drafted) as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.02 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 and to the applicable Borrower.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type or a continuation of Eurodollar Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and 4.02(b) have been satisfied on and as of the date of the applicable Credit Extension.

**4.03 Conditions to Initial Credit Extensions.** The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the Borrower or the applicable Guarantor, each dated the Initial Funding Date (or, in the case of certificates of governmental officials, a recent date before the Initial Funding Date) and each in form and substance satisfactory to the Agent and each of the Lenders:

(i) the Borrower Assignment and Assumption executed by Matson Navigation and Matson;

(ii) a Guaranty executed by Matson Navigation, Matson Terminals, Inc., a Hawaii corporation, Matson Ventures, Inc., a Hawaii corporation and Matson Logistics, Inc., a Hawaii corporation;

(iii) a Note executed by Matson in favor of each Lender requesting a Note;

(iv) such certificates of resolutions or other action, incumbency certificates with specimen signatures and/or other certificates of the secretary or assistant secretary of each Loan Party as the Agent may require evidencing the identity, authority and capacity of each Authorized Officer thereof authorized to act as an Authorized Officer in connection with this Agreement and the other Loan Documents;

(v) such documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing and in good standing in its jurisdiction of organization;

(vi) favorable opinions of Gibson, Dunn & Crutcher LLP and Cades Schutte LLP, addressed to the Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Lenders may reasonably request;

(vii) a certificate of a Responsible Officer of Matson either (A) attaching copies of all documents evidencing other necessary approval or consents with respect to the Loan Documents and the Restructuring Transactions or (B) stating that no such approvals or consents are so required; and

(viii) a certificate signed by a Responsible Officer of Matson certifying (A) that the conditions specified in Sections 4.02(a) and 4.02(b) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2011 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) At least two Business Days prior to the Initial Funding Date, the Agent shall have received written notice from Matson Navigation of its election to assign its rights and obligations under this Agreement to Matson pursuant to the Borrower Assignment and Assumption Agreement.

(c) Since May 1, 2012, there shall have been no reallocation of commitments pursuant to Section 2.14 of the Existing Credit Agreement.

(d) The outstanding loans, accrued and unpaid interest and other obligations (other than contingent indemnification obligations) under the Existing Credit Agreement shall have been repaid in full and all commitments thereunder shall have been terminated.

(e) The Alexander & Baldwin Credit Agreement shall have been (i) repaid in full and all commitments thereunder shall have been terminated and (ii) refinanced with a new revolving credit facility.

(f) The Agent and the Lenders shall be reasonably satisfied with the Separation Agreement. The Agent shall have received a copy, certified by a Responsible Officer of Matson as true and complete, of the Separation Agreement as originally executed and delivered, together with any amendments or supplements thereto and the other material agreements entered into in connection therewith set forth on Schedule 4.03.

(g) The Agent shall have received satisfactory evidence that the following events have occurred (in accordance with the material terms as publicly disclosed by Alexander & Baldwin or disclosed to the Agent, in each case, on or prior to May 1, 2012): (i) the merger of A&B Merger Corp. into Alexander & Baldwin; (ii) the conversion of Alexander & Baldwin into a limited liability company ("ABI LLC"); (iii) the distribution of the equity interests of Matson Navigation to Matson; and (iv) the contribution of the equity interests of ABI LLC to A&B II, Inc., a wholly owned subsidiary of Matson. Such evidence may be in the form of a certificate of a Responsible Officer with supporting attachments.

(h) The Agent shall have received a copy, certified by a Responsible Officer of Matson as true and complete, of the 2012 Note Purchase Agreement (together with all exhibits and schedules thereto) which shall amend and restate in its entirety the 2005 Note Purchase Agreement and be in form and substance reasonably satisfactory to the Agent.

(i) Unless waived by the Agent, Matson shall have paid all fees, charges and disbursements of counsel to the Agent (directly to such counsel if requested by the Agent) to the extent invoiced prior to or on the Initial Funding Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Initial Funding Date (provided that such estimate shall not thereafter preclude a final settling of accounts between Matson and the Agent).

The Agent shall notify Matson Navigation in writing when the conditions precedent to the initial Credit Extension have been satisfied. Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this



Section 4.03, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Initial Funding Date specifying its objection thereto.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Agent and the Lenders that:

**5.01 Organization.** Each Loan Party and each Material Subsidiary is duly organized, validly existing and in good standing under the laws of the state of its organization. The Borrower and each Material Subsidiary has the full power and authority to own its properties and to carry on its business as now being conducted, and is duly qualified in every state where the nature of its business requires that it do so, and is in good standing under the laws of every jurisdiction outside the state of its organization in which it owns or leases property or conducts business and in which the failure to so qualify would have a Material Adverse Effect. The Borrower and each Material Subsidiary has complied in all material respects with (or is exempt from the application of) all material federal, state and local laws, regulations and orders that are, or in the absence of any exemption could be, applicable to the operations of its business, including public utility, bank holding company, state agricultural and Environmental and Safety Laws, in each case except to the extent that the failure to so comply would not reasonably be expected to have a Material Adverse Effect. Each Loan Party has full power, authority and right to execute and deliver, and to perform and observe, the provisions of this Agreement and the other Loan Documents to which such Loan Party is a party and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance of the Loan Documents by each Loan Party have been authorized by all necessary corporate and other action, and, when duly executed and delivered, will be the legal, valid and binding obligations of such Loan Party, enforceable against it in accordance with their respective terms.

#### 5.02 Financial Statements.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Debt.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries dated March 31, 2012, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

**5.03 Actions Pending.** There is no action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened against the Borrower or any Subsidiary or any properties or rights of the Borrower or any Subsidiary, by or before any court, arbitrator or administrative or governmental body which could reasonably be expected to result in a Material Adverse Effect.

**5.04 Outstanding Debt.** Neither the Borrower nor any Subsidiary has any Debt outstanding except as not prohibited by this Agreement.

**5.05 Title to Properties.** The Borrower and each Material Subsidiary have good and indefeasible title to their respective real properties (other than properties which they lease) and have good title to all of their other material properties and assets, including the properties and assets reflected in the most recent audited balance sheet referred to in Section 5.02(a) or furnished pursuant to Section 6.01(b) (other than properties and assets disposed of in the ordinary course of business) except where the failure to have such good title would not reasonably be expected to have a Material Adverse Effect. Such properties are not subject to any Liens of any kind except Liens permitted by Section 7.02. There is no material default, nor any event that, with notice or lapse of time or both, would constitute such a material default under any material lease to which either the Borrower or any Material Subsidiary is a lessee, lessor, sublessee or sublessor.

**5.06 Taxes.** Each Loan Party and each Material Subsidiary has filed all Federal and state income tax and all other material tax and informational returns which are required to be filed by it. The Borrower and each such Subsidiary has paid all taxes as shown on such returns and on all assessments received to the extent that such taxes are not yet delinquent, except such taxes as are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP.

**5.07 Conflicting Agreements and Other Matters.** Neither the execution nor delivery of this Agreement or the other Loan Documents, nor the making of Credit Extensions hereunder, nor fulfillment of nor compliance with the terms and provisions of this Agreement or the other Loan Documents will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any Lien upon any of the properties or assets of the Borrower or any Subsidiary pursuant to, their respective articles of incorporation, bylaws or similar organizational documents, any award of any arbitrator or any agreement, instrument, order, judgment, decree, and after due investigation and to the Borrower's best knowledge, any statute, law, rule or regulation to which the Borrower or any Subsidiary is subject. Neither the Borrower nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing any of their respective Debt, any agreement relating thereto or any other contract or agreement which restricts or otherwise limits the incurring of Debt pursuant hereto, except as set forth on Schedule 5.07 hereto.

**5.08 Subsidiaries.** Set forth on Schedule 5.08 is a complete and accurate list as of the Closing Date of each Material Domestic Subsidiary.

**5.09 ERISA.** No accumulated funding deficiency (as defined in section 302 of ERISA and section 412 of the Code), whether or not waived, exists with respect to any Plan (other than a Multiemployer Plan). No liability to the PBGC has been or is expected by the Borrower or any ERISA Affiliate to be incurred with respect to any Plan (other than a Multiemployer Plan) by the Borrower, any Subsidiary or any ERISA Affiliate which is or would be materially adverse to the business, condition (financial or otherwise) or operations of the Borrower and its Subsidiaries taken as a whole. Neither the Borrower, any of its Subsidiaries or any ERISA Affiliate has incurred or presently expects to incur any withdrawal liability under Title IV of ERISA with respect to any Multiemployer Plan which is or would reasonably be expected to have a Material Adverse Effect. The execution and delivery of this Agreement and the other Loan Documents and the Credit Extensions hereunder will be exempt from, or did not and will not involve any transaction which is subject to the prohibitions of, section 406 of ERISA and did not and will not involve any transaction in connection with which a penalty could be imposed under section 502(i) of ERISA or a tax could be imposed pursuant to section 4975 of the Code.

**5.10 Government Consent.** Neither the nature of the Borrower or any of its Subsidiaries, nor any of their respective businesses or properties, nor any relationship between the Borrower or a Subsidiary and any other Person, nor any circumstance in connection with the Credit Extensions hereunder is such as to require any authorization, consent, approval, exemption or other action by, notice to or filing with any court, administrative or governmental body (other than (i) routine filings after the Closing Date with the SEC and/or state blue sky authorities and (ii) filings and consents required to consummate the Restructuring Transactions and Spinoff that will be obtained by the Initial Funding Date) in connection with (a) the execution and delivery of this Agreement and the other Loan Documents or (b) fulfillment of or compliance with the terms and provisions of this Agreement and the other Loan Documents, in either case, that has not been obtained.

**5.11 Investment Company Status; Margin Stock.** The Borrower is not an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, or an “investment adviser” within the meaning of the Investment Advisers Act of 1940. No part of the proceeds of any Credit Extension will be used in any manner that is in violation of Regulations U or X issued by the FRB. After applying the proceeds of each Credit Extension, margin stock (within the meaning of Regulation U issued by the FRB) will not constitute more than 25% of the value of the assets (either of the Borrower alone or the Borrower and its Subsidiaries on a consolidated basis) that are subject to the provisions of this Agreement that may cause the Credit Extensions to be deemed secured, directly or indirectly, by margin stock.

**5.12 Possession of Franchises, Licenses, Etc.** The Borrower and its Subsidiaries possess all material franchises, certificates, licenses, development and other permits and other authorizations from governmental political subdivisions or regulatory authorities and all material patents, trademarks, service marks, trade names, copyrights, licenses, easements, rights of way and other rights (collectively, “Material Rights”), free from burdensome restriction, that are necessary in the judgment of the Borrower in any material respect for the ownership, maintenance and operation of their business, properties and assets, and neither the Borrower nor any of its Subsidiaries is in violation of any Material Rights except where the violation of such Material Rights would not reasonably be expected to have a Material Adverse Effect. No event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such Material Rights except where the revocation of such Material Rights would not reasonably be expected to have a Material Adverse Effect, or which materially and adversely affects the rights of the Borrower or its Subsidiaries thereunder.

**5.13 Environmental and Safety Matters.** The Borrower and its Subsidiaries and all of their respective properties and facilities do comply and to the knowledge of the Borrower, have complied at all times and in all respects with all Environmental and Safety Laws except where failure to comply would not result in a Material Adverse Effect.

**5.14 Hostile Tender Offers.** None of the proceeds of the Credit Extensions will be used to finance any offer to purchase, or any purchase of, shares of capital stock of any corporation or equity interests in any other entity, or securities convertible into or representing the beneficial ownership of, or rights to acquire, any such shares or equity interests, if such shares, equity interests, securities or rights are of a class which is publicly traded on any securities exchange or in any over-the-counter market, other than (a) purchases for portfolio investment purposes of such shares, equity interests, securities or rights which, together with any shares, equity interests, securities or rights then owned by the Borrower and its Subsidiaries, represent less than 5% of the equity interests or beneficial ownership of such corporation or other entity, or (b) such offers or purchases as have been duly approved by the board of directors of such corporation or the equivalent governing body of such other entity.

**5.15 Employee Relations.** Neither the Borrower nor any Subsidiary is the subject of (a) any material strike, work slowdown or stoppage, union organizing drive or other similar activity or (b) any material action, suit, investigation or other proceeding involving alleged employment discrimination, unfair termination, employee safety or similar matters that in either case would reasonably be expected to have a Material Adverse Effect nor, to the best knowledge of the Borrower, is any such event imminent or likely to occur except those which, individually or in aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.16 OFAC.** No Loan Party, no Subsidiary nor, to the knowledge of senior management of any Loan Party, any Related Party is currently the subject of any Sanctions. No Credit Extension, nor the proceeds from any Credit Extension, has been used or will be used in such a manner as to constitute a violation of the Sanctions.

**5.17 Disclosure.** Neither this Agreement nor any other document, certificate or statement furnished to the Agent or any Lender by or on behalf of the Borrower in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, taken as a whole as of the date thereof, not misleading; provided, that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and information available to it at such time, it being understood that the Borrower is under no obligation to update such projections or underlying information.

## ARTICLE VI.

### AFFIRMATIVE COVENANTS

On and after the Initial Funding Date, and so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than any contingent indemnification Obligation) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding:

**6.01 Financial Information.** The Borrower shall deliver to the Agent (for distribution to the Lenders):

(a) as soon as practicable and in any event within 60 days after the end of each quarterly period (other than the last quarterly period) in each fiscal year (or if earlier, 5 days after the date required to be filed with the SEC), consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the period from the beginning of the current fiscal year to the end of such quarterly period, and a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such quarterly period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year, all in reasonable detail and certified by an authorized financial officer of the Borrower, subject only to changes resulting from year-end adjustments;

(b) as soon as practicable and in any event within 120 days after the end of each fiscal year of the Borrower (or if earlier, 5 days after the date required to be filed with the SEC), consolidated statements of income and cash flows of the Borrower and its Subsidiaries for such year and a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, setting forth in each case in comparative form corresponding figures from the preceding annual audit, certified by independent public accountants of recognized national standing whose opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit; provided, that, it shall not be a violation of this clause (b) if the opinion accompanying the financial statements for the last fiscal year prior to the Maturity Date is subject to a “going concern” or like qualification solely as a result of the impending maturity of the Loans under this Agreement;

(c) together with each delivery of financial statements required by clauses (a) and (b) above, a Compliance Certificate (x) setting forth computations showing the calculation of the covenants in Sections 7.01 and 7.05, (y) stating that there exists no Default, or if any such Default exists, specifying the nature and period of existence thereof and what action the Borrower proposes to take with respect thereto and (z) attaching supplements to Schedule 5.08 as are necessary such that, as supplemented, such Schedule would be accurate and complete as of the date of such Compliance Certificate;

(d) promptly upon transmission thereof, copies of all such financial, proxy and information statements, notices and other reports as are sent to the Borrower’s public stockholders and copies of all registration statements (without exhibits) and all reports which are filed with the SEC;

(e) promptly upon receipt thereof, a copy of each other material report submitted to the Borrower or any of its Subsidiaries by independent accountants in connection with any material annual, interim or special audit made by them of the books of such Borrower or such Subsidiary;

(f) promptly after the furnishing thereof, copies of any certificate, statement or report furnished to any other lender to, or holder of the debt securities of, the Borrower pursuant to the terms of any indenture, loan, credit or similar agreement or instrument and not otherwise required to be furnished to the Lenders pursuant to any other clause of this Section 6.01; and

(g) with reasonable promptness, such other financial data as the Agent or any Lender may reasonably request.

The Borrower also covenants that forthwith upon a Responsible Officer obtaining actual knowledge of a Default, it will deliver to the Agent and the Lenders an Officers’ Certificate specifying the nature and period of existence thereof and what action the Borrower proposes to take with respect thereto.

Documents required to be delivered pursuant to Section 6.01(a), (b) or (d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower’s website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender and (ii) the Borrower shall provide the Agent (by electronic mail) with an electronic link to such documents. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Agent and/or the Arranger may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the “Platform”) and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked by the Borrower as “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials “PUBLIC.”

**6.02 Inspection of Property.** The Borrower shall, and shall cause its Subsidiaries to, permit any employees or designated representatives of the Agent, any of its Related Parties or any other Lender with a Commitment in excess of \$5,000,000, at such Person’s expense, to visit and inspect any of the properties of the Borrower and its Subsidiaries, to examine their books and financial records and to make copies thereof or extracts therefrom and to discuss their affairs, finances and accounts with the Responsible Officers and the Borrower’s independent certified public accountants, all at such reasonable times and as often as such Person may reasonably request; provided that a principal financial officer of the Borrower shall have reasonable prior notice of, and may elect to be present during, discussions with the Borrower’s independent public accountants.

**6.03 Covenant to Secure Obligations Equally.** (i) If the Borrower or any of its Domestic Subsidiaries shall create, assume or otherwise incur any Lien upon any of its property or assets, whether now owned or hereafter acquired, other than Liens permitted by the provisions of Section 7.02 (including in such permitted Liens, without limitation, Liens securing Title XI Debt to the extent such Title XI Debt is permitted Priority Debt) or (ii) if the Borrower or any of its Subsidiaries shall create, assume or otherwise incur any Lien upon any of its property or assets, whether now owned or hereafter acquired to secure its obligations under the 2005 Note Purchase Agreement or the 2012 Note Purchase Agreement (other than (a) the Existing Note Purchase Agreement Lien and (b) cash collateral in an amount not to exceed the amount of Cash Collateral being provided by the Borrower and its Subsidiaries pursuant to Section 2.15), then in either case, the Borrower will make, or will cause its Subsidiaries to make, effective provision whereby the Obligations will be secured by such Lien equally and ratably with any and all other Debt thereby secured so long as any such other Debt shall be so secured pursuant to an agreement or agreements (including security agreements and similar collateral documents and an intercreditor agreement) reasonably acceptable to the Required Lenders.

**6.04 Maintenance of Properties; Insurance.** The Borrower shall, and shall cause its Subsidiaries to (a) maintain or cause to be maintained in good repair, working order and condition all material properties used or useful at that time in its business and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof and (b) maintain insurance with reputable and financially sound insurers in such amounts and against such liabilities and hazards as is customarily maintained by other companies operating similar businesses and together with each delivery of financial statements under Section 6.01(b), upon the request of the Agent, deliver certificates of insurance to the foregoing effect to the Agent.

**6.05 Environmental and Safety Laws.**

(a) The Borrower shall deliver promptly to the Agent notice of (i) any material enforcement, cleanup, removal or other material governmental or regulatory action instituted or, to the Borrower's best knowledge, threatened against the Borrower or any Material Subsidiary pursuant to any Environmental and Safety Laws, (ii) all material Environmental Liabilities and Costs against or in respect of the property, Borrower or any Material Subsidiary or any of its material properties and (iii) the Borrower's or any Material Subsidiary's discovery of any occurrence or condition on any material real property adjoining or in the vicinity of any of its properties that the Borrower or such Material Subsidiary has reason to believe would cause such property or any material part thereof to be subject to any material restrictions on its ownership, occupancy, transferability or use under any Environmental and Safety Laws.

(b) The Borrower shall, and shall cause its Material Subsidiaries to, keep and maintain its properties and conduct its and their operations in compliance in all material respects with all applicable Environmental and Safety Laws except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

**6.06 Use of Proceeds.** The Borrower shall, and shall cause its Subsidiaries to, use the proceeds of the Credit Extensions (a) to finance working capital, capital expenditures (including Acquisitions) and other lawful corporate purposes, (b) to refinance certain existing indebtedness of Matson Navigation, (c) for support of commercial paper issued by the Borrower, (d) to pay fees and expenses incurred in connection with this Agreement and the Restructuring Transactions and (e) to finance the A&B Capital Contribution; provided that in no event shall the proceeds of any Credit Extension be used in contravention of any law or of any Loan Document.

**6.07 United States Citizen.** The Borrower covenants that it will, and will cause each of its Subsidiaries that owns or operates any Vessel, at all times to preserve and maintain its status as a Section 2 Citizen. For purposes hereof, (a) "Section 2 Citizen" means a Person that is a citizen of the United States as required for the coastwise trade under Section 50501 of Title 46 of the United States Code and the regulations in effect from time to time thereunder, and (b) "Vessel" means each vessel that is (or is required to be) documented under and pursuant to the laws of the United States with a coastwise endorsement owned or operated by the Borrower or any Subsidiary.

**6.08 Guarantors.**

(a) Together with each delivery of financial statements required by Section 6.01(a) and 6.01(b), the Borrower shall notify the Agent if any Subsidiary has become a Material Domestic Subsidiary after the Initial Funding Date. Within 30 days after such notification (or such longer period as determined by Agent in its sole discretion), the Borrower shall cause such Material Domestic Subsidiary to (i) become a Guarantor by executing and delivering to the Agent a joinder to the Guaranty, and (ii) at the request of the Agent, deliver to the Agent such organization documents, resolutions and favorable opinions of counsel, all in form, content and scope similar to those delivered on the Closing Date or otherwise reasonably satisfactory to the Agent.

(b) If a Guarantor is a party to any transaction of merger, consolidation or other combination permitted by Section 7.04(b) or 7.04(c), the continuing or surviving Person of such transaction shall, within 30 days after the consummation of such transaction, (i) become a Guarantor by executing and delivering to the Agent a joinder to the Guaranty and (ii) at the request of the Agent, deliver to the Agent such organization documents, resolutions and favorable opinions of counsel, all in form, content and scope similar to those delivered on the Closing Date or otherwise reasonably satisfactory to the Agent.

(c) Notwithstanding the forgoing, concurrently with such time as any Person becomes a guarantor or other obligor under the 2005 Note Purchase Agreement or the 2012 Note Purchase Agreement, the Borrower shall cause such Person to (i) become a Guarantor by executing and delivering to the Agent a joinder to the Guaranty, and (ii) at the request of the Agent, deliver to the Agent such organization documents, resolutions and favorable opinions of counsel, all in form, content and scope similar to those delivered on the Closing Date or otherwise reasonably satisfactory to the Agent.

(d) So long as no Default exists, if a Guarantor ceases to be a Material Domestic Subsidiary, then upon the written request of the Borrower, the Agent shall release such Guarantor from its obligations under the Guaranty pursuant to Section 9.09; provided that the Agent shall not release such Guarantor unless such Guarantor is not at such time (or concurrently with such release by the Agent will cease to be) a guarantor or obligor under the 2005 Note Purchase Agreement or the 2012 Note Purchase Agreement.

## NEGATIVE COVENANTS

On and after the Initial Funding Date, and so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than any contingent indemnification Obligation) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding:

### 7.01 Financial Covenants.

(a) Minimum Consolidated Interest Coverage Ratio. The Borrower shall not permit the Consolidated Interest Coverage Ratio as of the end of any fiscal quarter of the Borrower to be less than 3.50 to 1.0.

(b) Maximum Consolidated Leverage Ratio. The Borrower shall not permit the Consolidated Leverage Ratio as of the end of any fiscal quarter of the Borrower to exceed 3.25 to 1.0 provided, however, that (i) in connection with any Acquisition in an Eligible Business Line that is not a Hostile Acquisition for which the aggregate purchase consideration equals or exceeds \$75,000,000, the maximum permitted Consolidated Leverage Ratio, at the election of the Borrower, with prior written notice from the Borrower to the Agent, shall increase to 3.90 to 1.0 on one occasion during the term of this Agreement, for the period beginning on the date of the consummation of such Acquisition and continuing until the fourth consecutive fiscal quarter end which occurs on or after the date of the consummation of such Acquisition, so long as the Borrower is in compliance on a pro forma basis with this Section 7.01(b) at such 3.90 to 1.0 level after giving effect to such Acquisition and (ii) in connection with any purchase or construction of a new container ship for which the aggregate purchase consideration or construction cost equals or exceeds \$125,000,000, the maximum permitted Consolidated Leverage Ratio, at the election of the Borrower, with prior written notice from the Borrower to the Agent prior to the Specified Date (as defined below) and specifying therein such Specified Date, shall increase to 3.50 to 1.0 on one occasion during the term of this Agreement, for the period beginning on a date determined by the Borrower between the commencement of payment for such container ship and delivery of such container ship (the "Specified Date") and continuing until the fourth consecutive fiscal quarter end which occurs on or after the Specified Date, so long as the Borrower is in compliance on a pro forma basis with this Section 7.01(b) at such 3.50 to 1.0 level after giving effect to such purchase or construction.

(c) Maximum Priority Debt. The Borrower shall not permit (i) the principal amount of Priority Debt at any time to exceed 20% of Consolidated Tangible Assets as of the most recently ended fiscal quarter for which financial statements have been delivered pursuant to Section 6.01(a) or 6.01(b); provided, that such maximum permitted percentage amount of Priority Debt shall be reduced to 17.5% at such time, if any, as the Borrower or any of its Subsidiaries acquires two new vessels for which the aggregate purchase consideration for each vessel exceeds \$100,000,000 and (ii) the principal amount of Priority Debt that is not Title XI Priority Debt at any time to exceed 10% of Consolidated Tangible Assets as of the most recently ended fiscal quarter for which financial statements have been delivered pursuant to Section 6.01(a) or 6.01(b).

Notwithstanding anything to the contrary in Section 7.01 (or the defined terms used therein), for any period which is relevant to the calculation of any financial covenant in Section 7.01, to the extent such period is prior to the consummation of the Spinoff, the relevant operating statement (i.e., income statement or statement of cash flows) categories shall be deemed to be for Matson Navigation and its Subsidiaries (rather than for Matson and its Subsidiaries).

**7.02 Liens.** The Borrower shall not, and shall not permit any Subsidiary to, create, assume or suffer to exist at any time any Lien on or with respect to any of its property or assets, whether now owned or hereafter acquired (whether or not provision is made for the equal and ratable securing of the Obligations in accordance with the provisions of Section 6.03 but subject to the limitation on Priority Debt in Section 7.01(c)), except:

(a) Liens for taxes not yet delinquent or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established to the extent required by GAAP;

(b) Liens (other than Liens pursuant to ERISA) incidental to the conduct of its business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit (including, without limitation, Liens on vessels or equipment (i) for crew and stevedores wages, (ii) for salvage and general average, (iii) arising by operation of law in the ordinary course of business in operating, maintaining or repairing vessels, and (iv) for damages arising from maritime torts which are unclaimed, or which are claimed and are covered by insurance and any deductible applicable thereto), and which do not in the aggregate materially detract from the value of its property or assets or materially impair the use thereof in the operation of its business;

(c) Liens on property or assets of a Subsidiary securing obligations of such Subsidiary to the Borrower or another Subsidiary;

(d) Liens encumbering the CCF to the extent incurred to secure the financing by the Borrower or Matson Navigation of "qualified vessels" as defined in Section 607 of the Merchant Marine Act, 1936, as amended;

(e) Liens existing on the Closing Date and listed on Schedule 7.02 and any renewals or extensions thereof, provided that the property covered thereby is not changed;

(f) other Liens securing Debt not otherwise permitted by clauses (a) through (e) above, inclusive; provided that the aggregate amount of all Priority Debt does not, at any time, exceed the level prohibited by Section 7.01(c), provided that, notwithstanding the foregoing, the Borrower shall not, and shall not permit any Subsidiary to, create or permit to exist any Lien on any property securing Debt outstanding or issued under the 2005 Note Purchase Agreement or the 2012 Note Purchase Agreement (other than (i) the Existing Note Purchase Agreement Lien and (ii) cash collateral in an amount not to exceed the amount of Cash Collateral being provided by the Borrower and its Subsidiaries pursuant to Section 2.15) unless and until the Obligations shall be secured equally and ratably with such Debt pursuant to an agreement or agreements (including security agreements and similar collateral documents and an intercreditor agreement) reasonably acceptable to the Required Lenders;

(g) any Lien securing obligations that do not constitute Debt existing on any property of any Person at the time it becomes a Subsidiary, or existing prior to the time of acquisition upon any property acquired by the Borrower or any Subsidiary through purchase, merger or

consolidation or otherwise, whether or not assumed by the Borrower or such Subsidiary; provided that any such Lien shall not encumber any other property of the Borrower or such Subsidiary (other than proceeds of such acquired property); and

(h) (i) other Liens securing obligations that do not constitute Debt provided that the aggregate amount of such obligations does not exceed \$10,000,000 at any time outstanding and (ii) other Liens securing obligations that do not constitute Debt provided that the aggregate fair market value (as reasonably determined by the Borrower acting in good faith) of all assets subject to all such Liens does not exceed \$10,000,000.

**7.03 Loans, Advances and Investments.** The Borrower shall not permit, and shall not permit any Subsidiary to make or permit to remain outstanding any loan or advance to, or own, purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any Person, or consummate any Acquisition, except that the Borrower or any Subsidiary may

(a) make, or permit to remain outstanding, loans or advances to the Borrower or any Subsidiary;

(b) own, purchase or acquire stock, obligations or securities of a Subsidiary, and, so long as the Borrower is in compliance with the financial covenants set forth in Section 7.01 on a pro forma basis immediately after giving effect to such transaction, consummate Acquisitions;

(c) acquire and own stock, obligations, securities or other investments (i) consisting of extensions of credit arising from the grant of trade credit, or received in settlement or partial satisfaction thereof of obligations (including any Debt or trade credit) owing to the Borrower or any Subsidiary or (ii) received in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of trade creditors or account debtors;

(d) make investments in accordance with the resolutions of the Board of Directors of the Borrower; provided that such resolutions authorize only investments rated investment grade by S&P, Moody's, or any other nationally recognized credit rating agency or investments in the Borrower's accounts receivable purchased or held by the CCF;

(e) make the A&B Capital Contribution on the Initial Funding Date;

(f) make any investment in any stock, obligations or securities of, or any other interest in, or any capital contribution to, an Eligible Business Line (subject, in the case of any Acquisition, to Section 7.03(b)); and

(g) make other investments, loans and advances which in the aggregate (at original cost) do not exceed \$30,000,000 at any time outstanding.

Notwithstanding the foregoing, (i) amounts in the CCF may be invested only as provided in subsection (d) above and (ii) for the avoidance of doubt, this Section 7.03 shall not apply to any Guarantee.

**7.04 Merger.** The Borrower shall not, and shall not permit any Subsidiary to, consummate any transaction of merger, consolidation or other combination with any other Person; provided that:

(a) any Subsidiary may merge with the Borrower; provided that the Borrower shall be the continuing or surviving corporation and immediately after such merger no Event of Default shall exist;

(b) any Subsidiary may merge with another Subsidiary; provided that if a Material Domestic Subsidiary merges with a Foreign Subsidiary, such Material Domestic Subsidiary shall be the surviving Person and immediately after such merger no Event of Default shall exist; and

(c) the Borrower or any Subsidiary may merge, consolidate or combine with any other Person in connection with an Acquisition permitted by Section 7.03(b); provided that (i) immediately after such merger, consolidation or combination, no Event of Default shall exist and (ii) if the Borrower is a party to such transaction, the Borrower will be the continuing or surviving corporation.

**7.05 Sale of Capital Assets.** The Borrower shall not, and shall not permit any Subsidiary to, sell, lease, transfer or otherwise dispose of any Capital Asset to any Person, except that during any rolling twelve-month period, the Borrower or any Subsidiary may sell or otherwise dispose of Capital Assets which constituted up to 10% of the total value of the consolidated assets of Matson Navigation and its Subsidiaries as of December 31, 2011, so long as (A) such Capital Assets sold contributed less than 25% of the Consolidated Net Income of the Borrower in each of the three fiscal years immediately preceding any such sale and (B) such Capital Assets, when considered together with all other Capital Assets sold or otherwise disposed of subsequent to December 31, 2011, do not constitute in excess of 30% of the total value of the consolidated assets of Matson Navigation and its Subsidiaries as of December 31, 2011; provided, that this covenant shall not apply to any transfer required by the Separation Agreement.

**7.06 Use of Proceeds.** The Borrower shall not use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.07 Transactions with Affiliates and Stockholders.** The Borrower shall not, and shall not permit any Subsidiary to, directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise deal with, in the ordinary course of business or otherwise (a) any Affiliate, (b) any Person owning, beneficially or of record, directly or indirectly, either individually or together with all other Persons to whom such Person is related by blood, adoption or marriage, stock of the Borrower or stock of any Person owning stock of the Borrower (of any class having ordinary voting power for the election of directors) aggregating 5% or more of such voting power or (c) any Person related by blood, adoption or marriage to any Person described or coming within the provisions of clause (a) or (b) of this Section 7.07; provided that the following shall be permitted: (i) the Borrower and Subsidiaries may enter into such transactions on terms no less favorable to the Borrower or Subsidiary than if no such relationship existed, (ii) customary fees, indemnities and reimbursements may be paid to officers, employees, consultants and directors of the Borrower

and its Subsidiaries; (iii) the Borrower and its Subsidiaries may enter into and make payments and provide benefits pursuant to reasonable and customary employment arrangements with officers and senior management employees; (iv) the Borrower may sell or issue its capital stock, (v) the Restructuring Transactions and the Spinoff; (vi) transactions between the Borrower and any Subsidiary, and among Subsidiaries of the Borrower and (vii) Restricted Payments made in compliance with Section 7.08.

**7.08 Dividend Limitation.** The Borrower shall not pay or declare any dividend on any class of stock or make any other distribution on account of any class of its stock, or redeem, purchase or otherwise acquire, directly or indirectly, any shares of its stock (all of the foregoing being herein called "Restricted Payments") unless (i) at the time any proposed Restricted Payment is to be made, and after giving effect to any proposed Restricted Payment, no Default exists or would exist after giving effect to such Restricted Payment and (ii) the Borrower is in compliance with the financial covenants set forth in Section 7.01 on a pro forma basis after giving effect to such Restricted Payment. Notwithstanding the foregoing, the Borrower may make the A&B Capital Contribution on the Initial Funding Date and the Spinoff may be consummated.

## ARTICLE VIII.

### EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.** Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within five days after the same becomes due, any interest on any Loan or on any L/C Obligation, any fee due hereunder or any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower fails to perform or observe any agreement contained in (i) Section 7.01 or (ii) Sections 7.02 through 7.09; or

(c) Other Defaults. The Borrower or any other Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure shall not be remedied within 30 days after any Responsible Officer obtains actual knowledge thereof; or

(d) Representations and Warranties. Any representation or warranty made by the Borrower herein or by any Loan Party or any of its officers in any Loan Document or any writing furnished in connection with or pursuant to this Agreement or any other Loan Document shall be false or misleading in any material respect on the date as of which made; provided that to the extent that such breach of representation or warranty relates to clause (c) of the definition of Material Adverse Effect, such breach of representation or warranty shall only constitute an Event of Default under this subsection (d) if such Loan Party knowingly breached such representation or warranty; or

(e) Cross-Default. (i) an Event of Default (as defined in the 2005 Note Purchase Agreement or the 2012 Note Purchase Agreement) has occurred and is continuing under the 2005 Note Purchase Agreement or the 2012 Note Purchase Agreement, as applicable; or (ii) the Borrower or any Material Subsidiary defaults in any payment of principal of, or premium or interest on, any Debt (other than the Obligations) beyond any period of grace provided with respect thereto, or the Borrower or any Material Subsidiary fails to perform or observe any other agreement, term or condition contained in any agreement relating to any such Debt (or any other event under any such agreement occurs and is continuing) and the effect of such default or other failure or event is to cause, or to permit the holder or holders of such Debt (or a trustee on behalf of such holder or holders) to cause, such Debt to become due (or to be required to be repurchased by the Borrower or any Subsidiary) prior to any stated maturity; provided that the aggregate amount of all Debt as to which such a default or other failure or event shall occur and be continuing exceeds \$15,000,000; or

(f) Insolvency Proceedings, Etc. (i) Any Loan Party or any Material Subsidiary makes an assignment for the benefit of creditors or is generally not paying its debts as such debts become due; or

(ii) any decree or order for relief in respect of any Loan Party or any Material Subsidiary is entered under any Debtor Relief Laws of any jurisdiction; or

(iii) any Loan Party or any Material Subsidiary petitions or applies to any tribunal for, or consents to, the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official of any Loan Party or any such Material Subsidiary, or of any substantial part of the assets of any Loan Party or any such Material Subsidiary, or commences a voluntary case under the Bankruptcy Code of the United States or any proceedings (other than proceedings for the voluntary liquidation and dissolution of a Material Subsidiary) relating to any Loan Party or any Material Subsidiary under any other Debtor Relief Laws; or

(iv) any petition or application of the type described in clause (iii) above is filed, or any such proceedings are commenced, against any Loan Party or any Material Subsidiary and any Loan Party or such Material Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein, or an order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings, and such order, judgment or decree remains unstayed and in effect for more than 30 days; or

(g) Dissolution, Etc. Any order, judgment or decree is entered in any proceedings against any Loan Party or any Material Subsidiary decreeing the dissolution of such Loan Party or such Material Subsidiary and such order, judgment or decree remains unstayed and in effect for more than 30 days; or

(h) ERISA. (i) Any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Borrower or any ERISA Affiliate that a Plan may become a subject of such proceedings, (iii) the aggregate amount under all Plans of the fair market value of the assets

(within the meaning of section 303 of ERISA, is less than 70% of the “Funding Target” (within the meaning of section 303 of ERISA), (iv) the Borrower or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Borrower or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Borrower or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Borrower or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect of the type described in clause (a) or (b) of the definition thereof; or

(i) Judgments. Any judgment(s) or decree(s) in the aggregate amount of \$25,000,000 or more shall be entered against the Borrower or any of its Material Subsidiaries that are not paid or fully covered (beyond any applicable deductibles) by insurance and such judgment or decree shall not have been vacated, discharged or stayed or bonded pending appeal within 60 days from the entry thereof; or

(j) Invalidation of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) Change of Control. There occurs any Change of Control.

**8.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Agent or any Lender.

**8.03 Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16, be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.15; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by law.

Subject to Sections 2.03(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

## ARTICLE IX.



## AGENT

**9.01 Appointment and Authority.** Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent, the Lenders and the L/C Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**9.02 Rights as a Lender.** The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.** The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, its Subsidiaries or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default in writing is given to the Agent by the Borrower, a Lender or the L/C Issuer.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

**9.04 Reliance by Agent.** The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.** The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

### **9.06 Resignation of Agent.**

- (a) The Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its

resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, in each case solely in its capacity as Agent and as provided in subsection (d) below, and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor’s appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Agent was acting as Agent.

(d) Any resignation by Bank of America as Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment by the Borrower of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable, (ii) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

**9.07 Non-Reliance on Agent and Other Lenders.** Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or other titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent, a Lender or the L/C Issuer hereunder.

**9.09 Guaranty Matters.** So long as no Event of Default exists or would result therefrom, the Lenders and the L/C Issuer irrevocably authorize the Agent, at its option and in its discretion, to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Material Domestic Subsidiary as a result of a transaction permitted under the Loan Documents. Upon request by the Agent at any time, the Required Lenders will confirm in writing the Agent’s authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.09.

## ARTICLE X.

### MISCELLANEOUS

**10.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or Unreimbursed Amounts under Letters of Credit, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate and (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(d) waive any condition set forth in Section 4.03 without the written consent of each Lender;

(e) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) release all or substantially all of the value of the Guaranty without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 9.09 or the provisions of the Guaranty (in which case such release may be made by the Agent acting alone); or

(g) change any provision of this Section or the definition of "Required Lenders" without the written consent of each Lender;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of the Agent under this Agreement or any other Loan Document; (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto and (v) Schedule 1.01 may be amended on the Initial Funding Date in a writing executed only by the Borrower, the Agent and each L/C Issuer. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

In addition, notwithstanding the foregoing, the Borrower may, by written notice to the Agent from time to time, make one or more offers (each, a "Loan Modification Offer") to all the Lenders to make one or more amendments or modifications to (A) allow the maturity of the Committed Loans of the accepting Lenders to be extended and (B) increase the Applicable Rate and/or fees payable with respect to the Committed Loans and Commitments of the accepting Lenders ("Permitted Amendments") pursuant to procedures reasonably specified by the Agent and reasonably acceptable to the Borrower. Such notice shall set forth (i) the terms and conditions of the requested Permitted Amendment and (ii) the date on which such Permitted Amendment is requested to become effective. Permitted Amendments shall become effective only with respect to the Committed Loans and/or Commitments of the Lenders that accept the applicable Loan Modification Offer (such Lenders, the "Accepting Lenders") and, in the case of any Accepting Lender, only with respect to such Lender's Committed Loans and/or Commitments as to which such Lender's acceptance has been made. The Borrower, each other Loan Party and each Accepting Lender shall execute and deliver to the Agent a Loan Modification Agreement and such other documentation as the Agent shall reasonably specify to evidence the acceptance of the Permitted Amendments and the terms and conditions thereof, and the Loan Parties shall also deliver such resolutions, opinions and other documents as reasonably requested by the Agent. The Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each of the parties hereto hereby agrees that (1) upon the effectiveness of any Loan Modification Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Permitted Amendment evidenced thereby and only with respect to the Committed Loans and Commitments of the Accepting Lenders as to which such Lenders' acceptance has been made and (2) any applicable Lender who is not an Accepting Lender may be replaced by the Borrower in accordance with Section 10.13.

## **10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any other Loan Party, the Agent, the L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that (i) approval of such procedures may be limited to particular notices or communications delivered through electronic communications to the extent provided in this subsection (b), shall be effective as provided in this subsection (b).

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Agent's transmission of Borrower Materials through the Internet except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party.

(d) Change of Address, Etc. Each of the Borrower, the Agent, the L/C Issuer and the Swing Line Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower, the Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Agent, L/C Issuer and Lenders. The Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Committed Loan Notices, Letter of Credit Applications and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower, except to the extent such losses, costs, expenses and liabilities resulted from the gross negligence or willful misconduct of such Person. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies.** No failure by any Lender, the L/C Issuer or the Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### **10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrower shall pay (i) except as provided in Section 10.06(b)(iv), all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of

this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Agent, any Lender or the L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) result from a claim brought by the Borrower against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) arise solely from claims of any Indemnitee against one or more other Indemnities that do not involve or have not resulted from (A) an act or omission of an Indemnitee in its capacity as Agent, L/C Issuer, arranger or book manager and (B) an act or omission (or an alleged act or omission) by the Borrower or any Subsidiary. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Agent (or any sub-agent thereof), the L/C Issuer, the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent), the L/C Issuer, the Swing Line Lender or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the outstanding Loans, unfunded Commitments and participation interests in Swing Line Loans and L/C Obligations of all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders’ Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or the L/C Issuer or the Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent), the L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, neither any Loan Party nor any Indemnitee shall assert, and each party hereby waives, any claim against any Indemnitee or any Loan Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof (other than an Indemnitee may assert, and does not waive, a claim against any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party). No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after written demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Agent, the L/C Issuer or any Lender, or the Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

## 10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender (other than as pursuant to the Borrower Assignment and Assumption on or prior to the Initial Funding Date) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer and the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. Such processing and recordation fees, together with the costs and expenses of the Agent incurred in connection with the execution and delivery of such Assignment and Assumption, shall be paid by either the assignor or the assignee. The assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of its Subsidiaries or Affiliates, (B) a natural person or (C) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (C).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Agent, the applicable pro rata share of Committed Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Committed Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law

without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, and upon receipt of the original Note from the assignor marked "Cancelled," the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than a natural Person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 10.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time a Lender acting as L/C Issuer or Swing Line Lender assigns all of its Commitment and Loans pursuant to subsection (b) above, such Lender may, (i) upon 30 days' notice to the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of the applicable Lender as L/C Issuer or Swing Line Lender, as the case may be. Any such appointment of a successor L/C Issuer or Swing Line Lender by the Borrower pursuant to this Section 10.06 shall not become effective until acceptance of the appointment by the successor L/C Issuer or Swing Line Lender. If a Lender resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If a Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and

become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the applicable resigning L/C Issuer to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit.

**10.07 Treatment of Certain Information; Confidentiality.** Each of the Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement (or any Eligible Assignee invited to be a Lender pursuant to Section 2.14) or (ii) any actual or prospective counterparty (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the prior written consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or any Subsidiary of the Borrower.

For purposes of this Section, “Information” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary.

Each of the Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable law, including Federal and state securities laws.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the “Maximum Rate”). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a



particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.** If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Agent the assignment fee (if any) specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### **10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.16 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i)

(A) the arranging and other services regarding this Agreement provided by the Agent, the Arranger, the other Lead Arranger(s) and the Lenders are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Agent, the Arranger, the other Lead Arranger(s) and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agent, the Arranger, each other Lead Arranger and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Agent, the Arranger, any other Lead Arranger nor any Lender has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent, the Arranger, the other Lead Arranger(s) and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Agent, the Arranger, any other Lead Arranger nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Agent, the Arranger, the other Lead Arranger(s) or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

#### **10.17 Electronic Execution of Assignments and Certain Other Documents.**

The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.18 USA PATRIOT Act.** Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

MATSON NAVIGATION COMPANY, INC.

By: /s/ Matthew J. Cox

Name: Matthew J. Cox

Title: President

By: /s/ Joel M. Wine

Name: Joel M. Wine

Title: Senior Vice President and Chief Financial Officer

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BANK OF AMERICA, N.A.,  
as Agent

By: /s/ Brenda H. Little

Name: Brenda H. Little

Title: Vice President

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BANK OF AMERICA, N.A.,  
as Lender, L/C Issuer and Swing Line Lender

By: /s/ Gordon H. Gray

Name: Gordon H. Gray

Title: Senior Vice President

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FIRST HAWAIIAN BANK,  
as a Lender and L/C Issuer

By: /s/ Susan Takeda

Name: Susan Takeda

Title: Vice President

---

BRANCH BANKING AND TRUST COMPANY,  
as a Lender

By: /s/ Robert M. Searson

Name: Robert M. Searson

Title: Senior Vice President

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JPMORGAN CHASE BANK, N.A.,  
as a Lender

By: /s/ Alex Rogin

Name: Alex Rogin

Title: Vice President

---



PNC BANK, NATIONAL ASSOCIATION,  
as a Lender

By: /s/ John Berry

Name: John Berry

Title: Vice President

---

U.S. BANK NATIONAL ASSOCIATION,  
as a Lender

By: /s/ Blake Malia

Name: Blake Malia

Title: Vice President

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AMERICAN SAVINGS BANK, F.S.B.,  
as a Lender

By: /s/ Rian DuBach

Name: Rian DuBach

Title: Vice President

---

BANK OF HAWAII,  
as a Lender

By: /s/ Darrell McCorquodale

Name: Darrell McCorquodale

Title: Vice President

---

KEYBANK NATIONAL ASSOCIATION,  
as a Lender

By: /s/ Tad L. Stainbrook

Name: Tad L. Stainbrook

Title: Vice President

---

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as a Lender

By: /s/ Dhiren Desai

Name: Dhiren Desai

Title: Vice President

---

CENTRAL PACIFIC BANK,  
as a Lender

By: /s/ Carl A Morita

Name: Carl A. Morita

Title: Vice President

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## **ALEXANDER & BALDWIN FINALIZES POST-SEPARATION FINANCING ARRANGEMENTS**

***New A&B Will Have a Well-Capitalized Balance Sheet Providing Strong Liquidity and Financial Flexibility***

***Receives Favorable IRS Ruling on Tax-Free Nature of Planned Separation***

HONOLULU – (June 7, 2012) – Alexander & Baldwin Holdings, Inc. (NYSE: ALEX) (“Company”), successor by merger to Alexander & Baldwin, Inc., today announced that, in connection with previously announced plans to separate its transportation and land businesses into two publicly traded companies, it has entered into new financing arrangements for the land business (“New A&B”). The new financing arrangements will provide significant liquidity and support New A&B in the execution of its growth strategies as a stand-alone company and complement separately announced financing arrangements that have been made for Matson Navigation Company, Inc. The New A&B financing arrangements consist of: (1) a new \$260 million unsecured revolving senior credit facility with a syndicate of banks, including an option to increase available capacity up to an additional \$90 million; and (2) a replenishing \$300 million, three-year unsecured note purchase and private shelf agreement, including a renewal or replacement of \$207 million of existing unsecured notes with Prudential Investment Management, Inc. and its affiliates (collectively, “Prudential”).

“Establishment of these financing arrangements marks another critical milestone as we move toward the separation of our transportation and land businesses into two stand-alone, publicly traded companies. Along with the receipt of a favorable IRS ruling on the separation, we have successfully satisfied key prerequisites to the planned separation. Subject to final board approval and the completion of various administrative and regulatory matters, we remain on track for completion of the separation early in the third quarter of this year or as early as the end of the second quarter,” said Stanley M. Kuriyama, president and chief executive officer of Alexander & Baldwin Holdings, Inc.

“As a stand-alone company, New A&B will have a strong, well-capitalized balance sheet and the new financing arrangements will further enhance New A&B’s liquidity and financial flexibility,” said Kuriyama. “In addition to securing significant borrowing capacity under our financing arrangements, we’ve also extended the maturities of New A&B’s unsecured term debt by several years, resulting in no large principal payment required in any year through 2026. The average required annual principal payment through 2026 will be \$14 million. The interest rates on the notes comprising the \$211 million aggregate amount of New A&B term debt remain unchanged.”

The unsecured revolving credit facility has an initial five-year term maturing in June 2017, and will be used for New A&B’s development projects, real estate investments and general corporate purposes. Bank of America, N.A. served as administrative agent, and Merrill Lynch, Pierce, Fenner & Smith Incorporated and First Hawaiian Bank served as joint lead arrangers of the new unsecured senior credit facility, whose lending group also includes Wells Fargo Bank, American AgCredit PCA, Bank of Hawaii, American Savings Bank and Central Pacific Bank. Both the revolving credit facility and Prudential shelf agreement contain customary representations, financial and other affirmative and negative covenants, events of defaults and remedies, and are subject to completion of the separation transaction.

In addition to the completion of post-separation financing arrangements, the Company has received a favorable private letter ruling from the U.S. Internal Revenue Service confirming the tax-free nature of the planned separation. Furthermore, Alexander & Baldwin, Inc. completed its shareholder-approved holding company merger which was intended to facilitate the separation. As a result of the merger, Alexander & Baldwin Holdings, Inc. replaced Alexander & Baldwin, Inc. as the publicly held corporation through which the Company’s operations are conducted and the previously-disclosed “Maritime Restrictions” became effective for Company shareholders.

Additional information about the financing arrangements and other matters covered in this release can be found in the Company’s Form 8-K, which will be filed with the Securities and Exchange Commission today.

### **About Alexander & Baldwin Holdings, Inc.**

Alexander & Baldwin Holdings, Inc., successor by merger to Alexander & Baldwin, Inc., is headquartered in Honolulu, Hawaii. A&B is engaged in ocean transportation and logistics services through its subsidiaries, Matson Navigation Company, Inc. and Matson Logistics, Inc.; in real estate through A&B Properties, Inc.; and in agribusiness through Hawaiian Commercial & Sugar Company. Additional information about A&B may be found at its web site: [www.alexanderbaldwin.com](http://www.alexanderbaldwin.com).

### **Forward-Looking Statements**

Statements in this press release that are not historical facts are “forward-looking statements,” within the meaning of the Private Securities Litigation Reform Act of 1995, that involve a number of risks and uncertainties that could cause actual results to differ materially from those contemplated by the relevant forward-looking statement. These forward-looking statements are not guarantees of future performance. This release should be read in conjunction with our Annual Report on Form 10-K and our other filings with the SEC through the date of this release, which identify important factors that could affect the forward-looking statements in this release. We do not undertake any obligation to update our forward-looking statements.

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## **MATSON FINALIZES POST-SEPARATION FINANCING ARRANGEMENTS**

### ***Maintains Strong Balance Sheet and Financial Flexibility as a Stand-Alone Company***

### ***Receives Favorable IRS Ruling on Tax-Free Nature of Planned Separation***

HONOLULU – (June 7, 2012) Alexander & Baldwin Holdings, Inc. (NYSE: ALEX), successor by merger to Alexander & Baldwin, Inc., today announced that its wholly-owned subsidiary, Matson Navigation Company, Inc. (“Matson Navigation”), has entered into a series of debt financing agreements undertaken on behalf of Matson, Inc. (“Matson”) as part of the previously announced plan to separate the Company’s transportation and land businesses into two publicly traded companies. Subject to final approval by the Alexander & Baldwin Holdings, Inc. Board of Directors, the separation remains on track for completion early in the third quarter of this year or as early as the end of the second quarter.

“We are pleased to announce that we have secured these important debt financing agreements, which mark an important step toward the establishment of Matson as a stand-alone company,” said Matt Cox, president of Matson Navigation. “As an independent company, Matson will be well capitalized, with a strong balance sheet and credit profile, thereby providing stability and the financial flexibility to pursue future growth opportunities.”

“Matson has achieved successful long-term debt financing agreements at a time when long-term rates are near historic lows,” said Joel Wine, senior vice president, chief financial officer and treasurer of Alexander & Baldwin Holdings, Inc. and senior vice president and chief financial officer of Matson Navigation. “With the exception of the existing Title XI debt, Matson’s debt structure will be unsecured and all long-term debt will be amortizing, which will allow Matson to avoid large bullet debt maturities. Additionally, the new revolving credit facility will enhance Matson’s liquidity profile and provide financial resources to continue to fund our future operational and growth initiatives.”

The new \$375 million unsecured revolving senior credit facility with a syndicate of banks has an option to increase the facility’s capacity by another \$75 million. The facility has a five-year term maturing in June 2017, with an initial stated interest rate of London Interbank Offered Rate (LIBOR) plus 1.5 percent. Matson anticipates that approximately \$75 million will be drawn from the new credit facility immediately following the separation. Bank of America, N.A. served as administrative agent, and Merrill Lynch, Pierce, Fenner & Smith Incorporated and First Hawaiian Bank served as joint lead arrangers for the revolving credit facility.

Matson Navigation entered into an amended and restated note agreement with Prudential Investment Management, Inc. and its affiliates (collectively, “Prudential”), which will be assigned to Matson, and under which Matson will issue new senior unsecured term notes in an aggregate amount of \$170 million with a weighted average coupon of 3.97 percent. The notes have final maturities of 11 years, 15 years and 20 years, with an overall weighted average life of approximately 9.3 years.

The initial draw on the \$375 million unsecured revolving senior credit facility and the proceeds from the \$170 million of new senior unsecured notes will be used to repay an existing revolver, to fund a contribution to Alexander & Baldwin as part of separation and to fund the general corporate purposes of Matson.

In addition, the existing \$56 million privately placed notes with Prudential currently secured by Matson Navigation’s *Manulani* vessel were also amended. Following the planned separation, these notes will be assigned to Matson, the security interest on the vessel will be released, and the coupon rate will be adjusted to 5.79 percent from 4.79 percent related to Matson’s overall debt restructuring as part of the separation. These notes have a remaining average life of approximately four years and the amortization schedule of the new notes will not change.

There is no change to Matson Navigation’s existing \$74.8 million of Title XI secured debt.

The financing agreements contain customary representations, financial and other affirmative and negative covenants, events of defaults and remedies, and are subject to completion of the separation transaction.

Alexander & Baldwin Holdings, Inc. has received a favorable private letter ruling from the U.S. Internal Revenue Service (IRS) confirming the tax-free nature of the planned separation. Furthermore, Alexander & Baldwin, Inc. completed its shareholder-approved holding company merger which was intended to facilitate the separation. As a result of the merger, Alexander & Baldwin Holdings, Inc. replaced Alexander & Baldwin, Inc. as the publicly held corporation through which the Company’s operations are conducted and the previously-disclosed “Maritime Restrictions” became effective for Company shareholders.

Additional information about the financing arrangements and other matters covered in this release can be found in Alexander & Baldwin Holdings, Inc.’s Form 8-K, which will be filed with the Securities and Exchange Commission today.

### **About Alexander & Baldwin Holdings, Inc.**

Alexander & Baldwin Holdings, Inc., successor by merger to Alexander & Baldwin, Inc., is headquartered in Honolulu, Hawaii. A&B is engaged in ocean transportation and logistics services through its subsidiaries, Matson Navigation Company, Inc. and Matson Logistics, Inc.; in real estate through A&B

Properties, Inc.; and in agribusiness through Hawaiian Commercial & Sugar Company. Additional information about A&B may be found at its web site: [www.alexanderbaldwin.com](http://www.alexanderbaldwin.com).

**About Matson Navigation Company, Inc.**

Founded in 1882, Matson is one of the leading U.S. carriers in the Pacific. Matson provides a vital lifeline to the island economies of Hawaii, Guam and Micronesia and premium, expedited service from China to Southern California. The Company's fleet of 17 ships includes containerships, combination container and roll-on/roll-off vessels and custom-designed barges. Matson Logistics, established in 1987, extends the geographic reach of Matson's transportation network throughout the continental U.S. Its integrated, asset-light logistics services include rail intermodal, highway brokerage and warehousing. Matson is a wholly owned subsidiary of Alexander & Baldwin Holdings, Inc. (NYSE: ALEX).

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**Forward-Looking Statements**

Statements in this press release that are not historical facts are “forward-looking statements,” within the meaning of the Private Securities Litigation Reform Act of 1995, that involve a number of risks and uncertainties that could cause actual results to differ materially from those contemplated by the relevant forward-looking statement. These forward-looking statements are not guarantees of future performance. This release should be read in conjunction with our Annual Report on Form 10-K and our other filings with the SEC through the date of this release, which identify important factors that could affect the forward-looking statements in this release. We do not undertake any obligation to update our forward-looking statements.

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