2012 AMENDED AND RESTATED  
 CREDIT AGREEMENT  
  
 dated as of December 21, 2012  
  
 among  
  
 PATRIOT TRANSPORTATION HOLDING, INC.  
 as Borrower  
  
 and  
  
 XXXXX FARGO BANK, N.A.  
 as Lender  
  
  
  
  
  
  
 TABLE OF CONTENTS  
  
 Page  
  
ARTICLE 1 DEFINITIONS; CONSTRUCTION 1  
 Section 1.1 Definitions 1  
 Section 1.2 Classifications of Loans  
 and Borrowings 16  
 Section 1.3 Accounting Terms and  
 Determination 16  
 Section 1.4 Terms Generally 16  
  
ARTICLE 2 AMOUNT AND TERMS OF THE COMMITMENTS 17  
 Section 2.1 General Description of  
 Facility 17  
 Section 2.2 Revolving Loans 17  
 Section 2.3 Procedure for Revolving  
 Loan Borrowings 17  
 Section 2.4 Term Loan Commitment 18  
 Section 2.5 Procedure for Term  
 Borrowing 18  
 Section 2.6 Funding of Borrowings 18  
 Section 2.7 Interest Elections 18  
 Section 2.8 Optional Reduction and  
 Termination of  
 Commitments 19  
 Section 2.9 Repayment of Loans 19  
 Section 2.10 Evidence of  
 Indebtedness 19  
 Section 2.11 Optional Prepayments 20  
 Section 2.12 Interest on Loans 20  
 Section 2.13 Fees 21  
 Section 2.14 Computation of Interest  
 and Fees 22  
 Section 2.15 Inability to Determine  
 Interest Rates 22  
 Section 2.16 Illegality 23  
 Section 2.17 Increased Costs 23  
 Section 2.18 Funding Indemnity 24  
 Section 2.19 Taxes 24  
 Section 2.20 Payments Generally 25  
 Section 2.21 Mitigation of  
 Obligations 25  
 Section 2.22 Letter of Credit  
 Commitment 26  
 Section 2.23 Procedure for Issuance  
 and Reimbursement of  
 Letters of Credit 26  
 Section 2.24 Increased Cost 26  
 Section 2.25 Obligations Absolute 27  
 Section 2.26 Letter of Credit  
 Documents 27  
  
ARTICLE 3 CONDITIONS PRECEDENT TO LOANS 28  
 Section 3.1 Conditions To  
 Effectiveness 28  
 Section 3.2 Each Credit Event 29  
  
ARTICLE 4 REPRESENTATIONS AND WARRANTIES 30  
  
 Section 4.1 Existence; Power 30  
 Section 4.2 Organizational Power;  
 Authorization 30  
 Section 4.3 Governmental Approvals;  
 No Conflicts 30  
 Section 4.4 Financial Statements 30  
 Section 4.5 Litigation and  
 Environmental Matters 31  
 Section 4.6 Compliance with Laws  
 and Agreements 31  
  
  
  
 Section 4.7 Investment Company Act,  
 Etc. 31  
 Section 4.8 Taxes 31  
 Section 4.9 Margin Regulations 31  
 Section 4.10 ERISA 32  
 Section 4.11 Ownership of Property 32  
 Section 4.12 Disclosure 32  
 Section 4.13 Labor Relations 32  
 Section 4.14 Subsidiaries 33  
 Section 4.15 Legal Name 33  
 Section 4.16 No Restrictions on  
 Dividends 33  
 Section 4.17 Solvency 33  
 Section 4.18 Insurance 33  
 Section 4.19 Outstanding  
 Indebtedness 33  
 Section 4.20 Letters of Credit Issued  
 Outside the Provisions of  
 the Agreement 33  
  
ARTICLE 5 AFFIRMATIVE COVENANTS 33  
 Section 5.1 Financial Statements and  
 Other Information 34  
 Section 5.2 Notices of Material  
 Events 35  
 Section 5.3 Existence; Conduct of  
 Business 35  
 Section 5.4 Compliance with Laws,  
 Etc. 36  
 Section 5.5 Payment of Obligations 36  
 Section 5.6 Books and Records 36  
 Section 5.7 Visitation, Inspection,  
 Etc. 36  
 Section 5.8 Maintenance of Properties;  
 Insurance 36  
 Section 5.9 Use of Proceeds 36  
 Section 5.10 Additional Subsidiaries 37  
 Section 5.11 Deposit Relationship 37  
  
ARTICLE 6 FINANCIAL COVENANTS 37  
 Section 6.1 Leverage Ratio 37  
 Section 6.2 Fixed Charge Coverage  
 Ratio 37  
  
ARTICLE 7 NEGATIVE COVENANTS 38  
 Section 7.1 Indebtedness 38  
 Section 7.2 Negative Pledge 39  
 Section 7.3 Fundamental Changes. 40  
 Section 7.4 Investments, Loans,  
 Etc. 41  
 Section 7.5 Restricted Payments 42  
 Section 7.6 Sale of Assets 42  
 Section 7.7 Transactions with  
 Affiliates 42  
 Section 7.8 Restrictive Agreements 43  
 Section 7.9 Sale and Leaseback  
 Transactions 43  
 Section 7.10 Hedging Agreements 43  
 Section 7.11 Amendment to Material  
 Documents 43  
 Section 7.12 Permitted Subordinated  
 Indebtedness 44  
 Section 7.13 Accounting Changes 44  
 Section 7.14 Name Changes 44  
  
ARTICLE 8 EVENTS OF DEFAULT 44  
 Section 8.1 Events of Default 44  
  
  
  
ARTICLE 9 RESERVED 47  
  
ARTICLE 10 MISCELLANEOUS 47  
 Section 10.1 Notices 47  
 Section 10.2 Waiver; Amendments. 48  
 Section 10.3 Expenses;  
 Indemnification 49  
 Section 10.4 Successors and Assigns 50  
 Section 10.5 Governing Law;  
 Jurisdiction; Consent to  
 Service of Process 51  
 Section 10.6 ARBITRATION 51  
 Section 10.7 Right of Setoff 53  
 Section 10.8 Counterparts;  
 Integration 53  
 Section 10.9 Survival 54  
 Section 10.10 Severability 54  
 Section 10.11 Confidentiality 54  
 Section 10.12 Interest Rate  
 Limitation 54  
 Section 10.13 US PATRIOT Act Notice 55  
  
  
Schedules  
  
Schedule 4.5 - Environmental Matters  
Schedule 4.14 - Subsidiaries  
Schedule 7.4 - Existing Investments  
  
Exhibits  
  
Exhibit A - Revolving Credit Note  
Exhibit B Form of Term Note  
Exhibit C - Form of Subsidiary  
 Guarantee Agreement  
 with Schedule I and  
 Annex I thereto  
Exhibit D - Form of Indemnity,  
 Subrogation and  
 Contribution Agreement  
 with Schedule I and Annex  
 I thereto  
Exhibit 2.3 - Notice of Revolving Loan  
 Borrowing  
Exhibit 2.5 Notice of Term Loan  
 Borrowing  
Exhibit 2.7 - Notice of Continuation/  
 Conversion  
Exhibit 3.1(b)(iv) - Form of  
 Secretary's Certificate  
Exhibit 3.1(b)(vii) - Form of Officer's  
 Certificate  
  
Annexes  
  
Annex I Captive Investment  
 Policy Statement  
  
  
  
  
 2012 AMENDED AND RESTATED CREDIT AGREEMENT  
  
 THIS 2012 AMENDED AND RESTATED CREDIT AGREEMENT  
(this "Agreement") is made and entered into as of  
December 21, 2012, by and among PATRIOT TRANSPORTATION  
HOLDING, INC., a Florida corporation (the "Borrower")  
and XXXXX FARGO BANK, N.A. (the "Lender").  
  
 W I T N E S S E T H:  
  
 WHEREAS, the Borrower, Wachovia Bank, National  
Association ("Wachovia"), Bank of America, N.A. ("Bank  
of America"), SunTrust Bank ("SunTrust") and Compass Bank  
("Compass") are parties to an Amended and Restated Credit  
Agreement dated as of November 10, 2004, as amended (the  
"Original Credit Agreement"), with Wachovia named therein  
as Administrative Agent; and  
  
 WHEREAS, the parties wish to make certain  
modifications to the Original Credit Agreement, including  
the designation of Xxxxx Fargo Bank, N.A., as successor by  
merger to Wachovia, as the sole lender under the revolving  
credit facility contemplated for the Original Credit  
Agreement, to increase the principal amount of such  
revolving credit facility to $40,000,000, to provide for a  
term loan facility in the principal amount of $15,000,000,  
to eliminate the provisions relating to the Administrative  
Agent and to make other conforming changes, all as more  
fully set forth below; and  
  
 WHEREAS, subject to the terms and conditions of  
this Agreement, the Lender is willing to establish a  
modified revolving credit facility and a new term loan  
facility for the benefit of the Borrower.  
  
 NOW, THEREFORE, in consideration of the premises  
and the mutual covenants herein contained, the Borrower  
and the Lender agree that the Original Credit Agreement  
is amended and restated to read as follows:  
  
 ARTICLE 1  
  
 DEFINITIONS; CONSTRUCTION  
  
 Section 1.1 Definitions. In addition to  
the other terms defined herein, the following terms used  
herein shall have the meanings herein specified (to be  
equally applicable to both the singular and plural forms  
of the terms defined):  
  
 "Affiliate" shall mean, as to any Person, any  
other Person that directly, or indirectly through one or  
more intermediaries, Controls, is Controlled by, or is  
under common Control with, such Person.  
  
 "Applicable Margin" shall mean the respective number  
of basis points per annum designated below determined  
based on the Borrower's Leverage Ratio:  
  
  
  
 LEVEL Leverage Applicable Margin  
 Ratio (basis points per annum)  
  
 Base Rate LIBOR(1) Commitment  
 Fee  
  
 I >=.45 to .55 100.0 150.0 25.0  
 II >=.35 to <.45 75.0 125.0 20.0  
 III <.35 25.0 100.0 15.0  
  
; provided, however, that adjustments, if any, to the  
Applicable Margin based on changes in the Borrower's  
Leverage Ratio as set forth above shall be calculated  
by the Lender quarterly, based upon the Borrower's  
quarterly financial statements, on a rolling four  
quarter basis, beginning with the Borrower's statements  
for the period ended September 30, 2011, and shall  
become effective (each an "Interest Rate Change Date"),  
(i) if interest is based on the Base Rate, on the third  
Day after the Lender receives the Covenant Compliance  
Certificate and/or the financial statements reflecting  
such change in the Borrower's Leverage Ratio or (ii) if  
interest is based on LIBOR, on the first Day of the  
Interest Period following the Interest Period that the  
Lender receives the Covenant Compliance Certificate  
and/or the financial statements reflecting such change  
in the Borrower's Leverage Ratio; and provided, further,  
however, if the Borrower shall fail to deliver any such  
Covenant Compliance Certificate or financial statements  
within the time period required pursuant to this  
Agreement, then the Applicable Margin shall be at Level  
I until the appropriate Covenant Compliance Certificate  
or financial statements, as the case may be, are so  
delivered. Notwithstanding the foregoing, the  
Applicable Margin from the Closing Date until the date  
that the financial statements and/or Covenant Compliance  
Certificate for the fiscal quarter ending September 30,  
2012 are required to be delivered to the Lender shall be  
at Level III.  
  
 "Available Amount" means on the calculation date,  
the maximum amount available to be drawn under any Letter  
of Credit.  
  
 "Availability Period" shall mean the period from  
the Closing Date to the Commitment Termination Date.  
  
 "Bank Products" shall mean any of the following  
services provided to Borrower by Lender (or any Affiliate  
of a Lender): (a) any treasury or other cash management  
services, including deposit accounts, automated clearing  
house (ACH) origination and other funds transfer,  
depository (including cash vault and check deposit), zero  
balance accounts and sweeps, return items processing,  
controlled disbursement accounts, positive pay, lockboxes  
and lockbox accounts, account reconciliation and  
information reporting, payables outsourcing, payroll  
processing, trade finance services, investment accounts  
and securities accounts, (b) card services,  
  
  
  
  
including credit cards (including purchasing cards  
and commercial cards), prepaid cards, including payroll,  
stored value and gift cards, merchant services  
processing, and debit card services and (c) Hedging  
Agreements entered into with Lender (or an Affiliate  
of Lender).  
  
 "Base Rate" shall mean at any time the Federal  
Funds Rate plus 0.5% per annum.  
  
 "Base Rate Loan" when used in reference to any  
Loan or Borrowing, refers to whether such Loan, or the  
Loans comprising such Borrowing, bears interest at a rate  
determined by reference to the Base Rate.  
  
 "Borrower" shall have the meaning in the  
introductory paragraph hereof.  
  
 "Borrowing" shall mean a borrowing consisting  
of Loans of the same Type, made, converted or  
continued on the same date and in the case of  
Eurodollar Loans, as to which a single Interest Period  
is in effect.  
  
 "Business Day" shall mean (i) any day other than  
a Saturday, Sunday or other day on which commercial  
banks in Jacksonville, Florida are authorized or  
required by law to close and (ii) if such day relates  
to a Borrowing of, a payment or prepayment of principal  
or interest on, a conversion of or into, or an Interest  
Period for, a Eurodollar Loan or a notice with respect  
to any of the foregoing, any day on which dealings in  
Dollars are carried on in the London interbank market.  
  
 "Capital Expenditures" shall mean for any  
period, without duplication, (i) the additions to  
property, plant and equipment and other capital  
expenditures of the Borrower and its Subsidiaries that  
are (or would be) set forth on a consolidated statement  
of cash flows of the Borrower for such period prepared  
in accordance with GAAP and (ii) Capital Lease  
Obligations incurred by the Borrower and its  
Subsidiaries during such period.  
  
 "Capital Lease Obligations" of any Person shall  
mean all obligations of such Person to pay rent or  
other amounts under any lease (or other arrangement  
conveying the right to use) of real or personal  
property, or a combination thereof, which obligations  
are required to be classified and accounted for as  
capital leases on a balance sheet of such Person  
under GAAP, and the amount of such obligations shall  
be the capitalized amount thereof determined in  
accordance with GAAP.  
  
 "Change in Control" shall mean the occurrence  
of one or more of the following events: (a) any sale,  
lease, exchange or other transfer (in a single  
transaction or a series of related transactions) of  
all or substantially all of the assets of the  
Borrower to any Person or "group" (within the  
meaning of the Securities Exchange Act of 1934 and  
the rules of the Securities and Exchange Commission  
thereunder in effect on the date hereof), (b) the  
acquisition of ownership, directly or indirectly,  
beneficially or of record, by any Person or "group"  
(within the meaning of the Securities Exchange Act  
of 1934 and the rules of the Securities and Exchange  
Commission thereunder as in effect on the date hereof)  
of thirty percent (30%) or more of the outstanding  
shares of the voting stock of the Borrower; or (c)  
occupation of a majority of the seats (other than  
vacant seats) on the board of directors of the  
Borrower by Persons who were neither (i) nominated  
by the current board of directors or (ii) appointed  
by directors so nominated.  
  
  
  
 "Change in Law" shall mean (i) the adoption  
of any applicable law, rule or regulation after  
the date of this Agreement, (ii) any change in any  
applicable law, rule or regulation, or any change  
in the interpretation or application thereof, by  
any Governmental Authority after the date of this  
Agreement, or (iii) compliance by the Lender (or  
for purposes of Section 2.17(b) or Section 2.24,  
by the Lender's holding company, if applicable)  
with any request, guideline or directive (whether  
or not having the force of law) of any  
Governmental Authority made or issued after the  
date of this Agreement.  
  
 "Closing Date" shall mean December 21, 2012.  
  
 "Code" shall mean the Internal Revenue Code  
of 1986, as amended and in effect from time to time.  
  
 "Commitment Termination Date" shall mean  
the earliest of (i) December 31, 2017, (ii) the  
date on which the Revolving Commitment is  
terminated pursuant to Section 2.8 or (iii) the  
date on which all amounts outstanding under this  
Agreement have been declared or have  
automatically become due and payable (whether  
by acceleration or otherwise).  
  
 "Commitments" shall mean, collectively,  
the Revolving Commitment and the Term  
Commitment.  
  
 "Consolidated Current Maturities of  
Long Term Debt" shall mean the portion of  
Consolidated Long Term Debt of the Borrower  
and its Subsidiaries, on a consolidated basis  
determined in accordance with GAAP, paid during  
the twelve (12) month period ending on the  
last day of the month prior to the date as of  
which said determination is to be made, but  
excluding any amounts paid during such period  
in respect of Consolidated Long Term Debt that  
was not in default and which was voluntarily  
prepaid by the Borrower and its Subsidiaries.  
  
 "Consolidated EBITDA" shall mean, for the  
Borrower and its Subsidiaries for any  
period, an amount equal to the sum of (a)  
Consolidated Net Income for such period plus (b)  
to the extent deducted in determining Consolidated  
Net Income for such period, (i) Consolidated  
Interest Expense, (ii) Consolidated Income Tax  
Expense, and (iii) depreciation, depletion and  
amortization determined on a consolidated basis  
in accordance with GAAP in each case for such  
period.  
  
 Consolidated Income Tax Expense" shall  
mean, for the Borrower and its Subsidiaries for  
any period determined on a consolidated basis in  
accordance with GAAP, the aggregate of all  
present or future taxes, levies, imposts, duties,  
deductions, charges or withholdings paid in cash  
to any Governmental Authority.  
  
 "Consolidated Interest Expense" shall mean,  
for the Borrower and its Subsidiaries for any  
period determined on a consolidated basis in  
accordance with GAAP, the sum of (i) total  
cash interest expense, including without  
limitation the interest component of any  
payments in respect of Capital Leases  
Obligations capitalized or expensed during  
such period (whether or not actually paid  
during such period) plus (ii) the net amount  
payable (or minus the net amount receivable)  
under Hedging Agreements during such period  
(whether or not actually paid or received  
during such period).  
  
 "Consolidated Long Term Debt" shall mean,  
for any period, all Indebtedness of the  
Borrower and its Subsidiaries, or any portion  
thereof, determined on a consolidated basis and  
in accordance with GAAP, the maturity of which  
extends beyond twelve (12) months from the  
date of calculation of Consolidated Long Term  
Debt.  
  
 "Consolidated Net Income" shall mean,  
for any period, the net income (or loss) of the  
Borrower and its Subsidiaries for such period  
determined on a consolidated basis in accordance  
with GAAP, but excluding therefrom (to the  
extent otherwise included therein) (i) any  
extraordinary gains or losses, (ii) any gains  
attributable to write-ups of assets, (iii) any  
equity interest of the Borrower or any  
Subsidiary of the Borrower in the unremitted  
earnings of any Person that is not a  
Subsidiary and (iv) any income (or loss) of  
any Person accrued prior to the  
date it becomes a Subsidiary or is merged  
into or consolidated with the Borrower or any  
Subsidiary on the date that such Person's  
assets are acquired by the Borrower or any  
Subsidiary.  
  
 "Consolidated Net Worth" shall mean,  
as of any date, the total assets of the Borrower  
and its Subsidiaries that would be reflected  
on the Borrower's consolidated balance sheet  
as of such date prepared in accordance with  
GAAP, after eliminating all amounts properly  
attributable to minority interests, if any,  
in the stock and surplus of Subsidiaries,  
minus the sum of (i) the total liabilities of  
the Borrower and its Subsidiaries that would  
be reflected on the Borrower's consolidated  
balance sheet as of such date prepared in  
accordance with GAAP and (ii) the amount of  
any write-up in the book value of any assets  
resulting from a revaluation thereof or  
any write-up in excess of the cost of such  
assets acquired reflected on the consolidated  
balance sheet of the Borrower as of such date  
prepared in accordance with GAAP.  
  
 "Consolidated Total Capital" shall mean,  
as of any date of determination with respect to  
the Borrower, the sum of (i) Consolidated Total  
Debt and (ii) Consolidated Net Worth.  
  
 "Consolidated Total Debt" shall mean,  
as of any date of determination, all Indebtedness  
of the Borrower and its Subsidiaries that would  
be reflected on a consolidated balance sheet of  
the Borrower prepared in accordance with GAAP as  
of such date.  
  
 "Control" shall mean the power, directly  
or indirectly, either to (i) vote five percent  
(5%) or more of securities having ordinary  
voting power for the election of directors (or  
persons performing similar functions) of a  
Person or (ii) direct or cause the direction  
of the management and policies of a Person,  
whether through the ability to exercise  
voting power, by contract or otherwise. The  
terms "Controlling," "Controlled by," and  
"under common Control with" have  
meanings correlative thereto.  
  
 "Covenant Compliance Certificate" shall  
mean a certificate in such form as may be  
acceptable to the Lender, containing all  
the financial covenants and ratios with which the  
Borrower is required to comply during the term of  
this Agreement and containing calculations  
reflecting whether or not the Borrower is in  
compliance with each such financial covenant or  
ratio.  
  
 "Daily One Month LIBOR" means for any day,  
the rate of interest equal to LIBOR then in  
effect for delivery for a one (1) month period.  
  
  
  
 "Daily One Month LIBOR Loan" when used  
in reference to any Loan or Borrowing, refers  
to whether such Loan, or the Loans comprising  
such Borrowing, bears interest at a rate  
determined by reference to Daily One Month LIBOR.  
  
 "Default" shall mean any condition or  
event that, with the giving of notice or the lapse  
of time or both, would constitute an Event of Default.  
  
 "Default Interest" shall have the meaning  
set forth in Section 2.12(b).  
  
 "Dollar(s)" and the sign "$" shall mean  
lawful money of the United States of America.  
  
 "Environmental Laws" shall mean all laws,  
rules, regulations, codes, ordinances, orders,  
decrees, judgments, injunctions, notices or  
binding agreements issued, promulgated or entered  
into by or with any Governmental Authority,  
relating in any way to the environment,  
preservation or reclamation of natural resources,  
the management, Release or threatened Release  
of any Hazardous Material or to health and  
safety matters.  
  
 "Environmental Liability" shall mean any  
liability, contingent or otherwise (including any  
liability for damages, costs of environmental  
investigation and remediation, costs of  
administrative oversight, fines, natural resource  
damages, penalties or indemnities), of the  
Borrower or any Subsidiary directly or indirectly  
resulting from or based upon (a) any actual or  
alleged violation of any Environmental Law, (b)  
the generation, use, handling, transportation,  
storage, treatment or disposal of any Hazardous  
Materials, (c) any actual or alleged exposure to  
any Hazardous Materials, (d) the Release or  
threatened Release of any Hazardous Materials  
or (e) any contract, agreement or other  
consensual arrangement pursuant to which  
liability is assumed or imposed with respect  
to any of the foregoing.  
  
 "ERISA" shall mean the Employee  
Retirement Income Security Act of 1974, as  
amended from time to time, and any successor  
statute.  
  
 "ERISA Affiliate" shall mean any trade  
or business (whether or not incorporated),  
which, together with the Borrower, is treated  
as a single employer under Section 414(b) or  
(c) of the Code or, solely for the purposes  
of Section 302 of ERISA and Section 412 of  
the Code, is treated as a single employer  
under Section 414 of the Code.  
  
 "ERISA Event" shall mean (a) any  
"reportable event", as defined in Section  
4043 of ERISA or the regulations issued  
thereunder with respect to a Plan (other  
than an event for which the 30-day notice  
period is waived); (b) the existence with r  
espect to any Plan of an "accumulated funding  
deficiency" (as defined in Section 412 of the  
Code or Section 302 of ERISA), whether or not  
waived; (c) the filing pursuant to Section  
412(d) of the Code or Section 303(d) of ERISA  
of an application for a waiver of the minimum  
funding standard with respect to any Plan; (d)  
the incurrence by the Borrower or any of its  
ERISA Affiliates of any liability under Title  
IV of ERISA with respect to the termination  
of any Plan; (e) the receipt by the  
Borrower or any ERISA Affiliate from the  
PBGC or a plan administrator appointed by  
the PBGC of any notice relating to an  
intention to terminate any Plan or Plans or  
to appoint a trustee to administer any Plan;  
(f) the incurrence by the Borrower or any of  
its ERISA Affiliates of any liability with  
respect to the withdrawal or partial  
withdrawal from any Plan or Multiemployer  
Plan; or (g) the receipt by the Borrower or  
any ERISA Affiliate of any notice, or the  
receipt by any  
  
  
  
Multiemployer Plan from the Borrower or any  
ERISA Affiliate of any notice, concerning the  
imposition of Withdrawal Liability or a  
determination that a Multiemployer Plan is,  
or is expected to be, insolvent or in  
reorganization, within the meaning of  
Title IV of ERISA.  
  
 "Eurodollar" when used in reference  
to any Loan or Borrowing, refers to whether  
such Loan, or the Loans comprising such  
Borrowing, bears interest at a rate  
determined by reference to the LIBOR.  
  
 "Event of Default" shall have the  
meaning provided in Article 8.  
  
 "Excluded Taxes" shall mean with  
respect to the Lender or any other  
recipient of any payment to be made by  
or on account of any obligation of the  
Borrower hereunder, (a) income or franchise  
taxes imposed on (or measured by) its net  
income by the United States of America, or  
by the jurisdiction under the laws of which  
such recipient is organized or in which its  
principal office is located or, in the case  
of the Lender, in which its applicable  
lending office is located and (b) any branch  
profits taxes imposed by the United States  
of America or any similar tax imposed  
by any other jurisdiction in which the  
Borrower is located.  
  
 "Federal Funds Rate" shall mean, for  
any day, the rate per annum (rounded upwards,  
if necessary, to the next 1/8th of 1%)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 for the  
immediately preceding day, as published by  
the Federal Reserve Bank of New York;  
provided that if no such rate is so published  
on any day, then the Federal Funds Rate  
for such day shall be the rate most  
recently published.  
  
 "Fixed Charge Coverage Ratio" shall  
mean, for any period of four consecutive fiscal  
quarters of the Borrower, the ratio of (a)  
Consolidated EBITDA for such period less  
Consolidated Income Tax Expenses to (b) the  
sum of Consolidated Interest Expense plus  
Consolidated Current Maturities of Long Term  
Debt for such period.  
  
 "GAAP" shall mean generally accepted  
accounting principles in the United States  
applied on a consistent basis and subject to  
the terms of Section 1.3.  
  
 "Governmental Authority" shall mean  
the government of the United States of America,  
any other nation or 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.  
  
 "Guarantee" of or by any Person (the  
"guarantor") shall mean any obligation,  
contingent or otherwise, of the guarantor  
guaranteeing or having the economic effect  
of guaranteeing any Indebtedness or other  
obligation of any other Person (the "primary  
obligor") in any manner, whether directly  
or indirectly and including any obligation,  
direct or indirect, of the guarantor (a)  
to purchase or pay (or advance or supply  
funds for the purchase or payment of) such  
Indebtedness or other obligation or to  
purchase (or to advance or supply funds  
for the purchase of) any security for the  
payment thereof, (b) to purchase or lease  
property, securities or services  
for the purpose of assuring the owner of  
such Indebtedness or other obligation of  
the payment thereof, (c) to maintain working  
capital, equity capital or any other  
financial statement  
  
  
  
  
condition or liquidity of the primary  
obligor so as to enable the primary obligor  
to pay such Indebtedness or other obligation  
or (d) as an account party in respect of any  
letter of credit or letter of guaranty  
issued in support of such Indebtedness or  
obligation; provided, that the term "Guarantee"  
shall not include endorsements for collection  
or deposits in the ordinary course of business.  
The amount of any Guarantee shall be deemed to  
be an amount equal to the stated or determinable  
amount of the primary obligation in respect of  
which the Guarantee is made or, if not so stated  
or determinable, the maximum reasonably  
anticipated liability in respect thereof  
(assuming such Person is required to perform  
thereunder) as determined by such Person in  
good faith. The term "Guarantee" used as a verb  
has a corresponding meaning.  
  
 "Guarantors" shall mean FRTL, Inc.,  
Florida Rock and Tank Lines, Inc., STI  
Holdings, Inc., Florida Rock Properties, Inc.,  
FRP Development Corp. and any future Subsidiary  
which is required pursuant to Section 5.10 to  
become a Guarantor.  
  
 "Hazardous Materials" means all explosive  
or radioactive substances or wastes and all  
hazardous or toxic substances, wastes or other  
pollutants, including petroleum or petroleum  
distillates, asbestos or asbestos containing  
materials, polychlorinated biphenyls, radon gas,  
infectious or medical wastes and all other  
substances or wastes of any nature regulated  
pursuant to any Environmental Law.  
  
 "Hedging Agreements" shall mean interest  
rate swap, cap or collar agreements, interest  
rate future or option contracts, currency  
swap agreements, currency future or option  
contracts, commodity agreements and other  
similar agreements or arrangements designed  
to protect against fluctuations in interest  
rates, currency values or commodity values.  
  
 "Indebtedness" of any Person shall mean,  
without duplication (i) all obligations of such  
Person for borrowed money, (ii) all obligations  
of such Person evidenced by bonds, debentures,  
notes or other similar instruments, (iii) all  
obligations of such Person in respect of the  
deferred purchase price of property or services  
(other than trade payables incurred in the  
ordinary course of business; provided, that for  
purposes of Section 8.1(f), trade payables  
overdue by more than 120 days shall be included  
in this definition except to the extent that  
any of such trade payables are being disputed  
in good faith and by appropriate measures),  
(iv) all obligations of such Person under any  
conditional sale or other title retention  
agreement(s) relating to property acquired by  
such Person, (v) all Capital Lease Obligations  
of such Person, (vi) all obligations, contingent  
or otherwise, of such Person in respect of  
letters of credit, acceptances or similar  
extensions of credit, (vii) all Guarantees of  
such Person of the type of Indebtedness  
described in clauses (i) through (vi) above,  
(viii) all Indebtedness of a third party  
secured by any Lien on property owned by such  
Person, whether or not such Indebtedness has  
been assumed by such Person, (ix) all  
obligations of such Person, contingent or  
otherwise, to purchase, redeem, retire or  
otherwise acquire for value any common stock  
of such Person, and (x) Off-Balance Sheet  
Liabilities. The Indebtedness of any Person  
shall include the Indebtedness of any  
partnership or joint venture in which such  
Person is a general partner or a joint  
venturer, except to the extent that the  
terms of such Indebtedness provide that such  
Person is not liable therefor.  
  
 "Indemnified Taxes" shall mean Taxes  
other than Excluded Taxes.  
  
  
  
 "Indemnity and Contribution Agreement"  
shall mean the 2012 Indemnity, Subrogation  
and Contribution Agreement, substantially  
in the form of Exhibit D, among the Borrower,  
the Subsidiary Loan Parties and the Lender.  
  
 "Interest Period" shall mean with  
respect to any Eurodollar Borrowing, a period  
of 30, 60, 90 or 180 days, as designated by  
Borrower in accordance with the applicable  
provisions of Article 2; provided, that:  
  
 (a) the initial Interest Period  
for such Borrowing shall commence on the  
date of such Borrowing (including the date  
of any conversion from a Borrowing of another  
Type) and each Interest Period occurring  
thereafter in respect of such Borrowing shall  
commence on the day on which the next  
preceding Interest Period expires;  
  
 (b) if any Interest Period would  
otherwise end on a day other than a Business  
Day, such Interest Period shall be extended  
to the next succeeding Business Day;  
  
 (c) any Interest Period in  
respect of a Eurodollar Borrowing which 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 such calendar month; and  
  
 (d) no Interest Period may extend  
beyond the Commitment Termination Date.  
  
 "Lender" shall have the meaning assigned  
to such term in the opening paragraph of this  
Agreement.  
  
 "Letter of Credit" shall mean any standby  
letter of credit (or at the Lender's discretion,  
any documentary letter of credit) issued by the  
Lender pursuant to Section 2.22 hereof, as it may  
be modified from time to time. The term "Letter  
of Credit" shall not include any letters of credit  
issued by the Lender other than pursuant to this  
Agreement.  
  
 "Letter of Credit Documents" shall mean  
such applications and other agreements as the  
Lender may require in connection with the  
issuance of a Letter of Credit, as they may be  
modified from time to time.  
  
 "Letter of Credit Exposure" shall mean  
the aggregate Available Amount of all  
outstanding Letters of Credit as to which the  
Lender is obligated to make Revolving Loan  
advances pursuant to Section 2.23.  
  
 "Letter of Credit Notice" shall have  
the meaning set forth in Section 2.23.  
  
 "Leverage Ratio" shall mean, as of  
any date of determination with respect to the  
Borrower, the ratio of (i) Consolidated  
Total Debt as of such date to (ii)  
Consolidated Total Capital as of such date.  
  
 "LIBOR" shall mean, for any applicable  
Interest Period with respect to any Eurodollar  
Loan, the rate per annum (rounded upward,  
if necessary, to the nearest whole 1/8 of 1%)  
and determined pursuant to the following  
formula:  
  
 LIBOR = Base LIBOR  
 -------------------------------  
 100% - LIBOR Reserve Percentage  
  
  
 For purposes of the foregoing, (i)  
"LIBOR Reserve Percentage" means the  
reserve percentage prescribed by the Board  
of Governors of the Federal Reserve System  
(or any successor) for "Eurocurrency  
Liabilities" (as defined in Regulation D of  
the Federal Reserve Board, as amended),  
adjusted by the Lender for expected changes  
in such reserve percentage during the  
applicable Interest Period; and (ii) "Base  
LIBOR" means the rate per annum for United  
States dollar deposits quoted by Lender (A)  
for the purpose of calculating effective  
rates of interest for Loans making  
reference to LIBOR, as the Inter-Bank Market  
Offered Rate, with the understanding that  
such rate is quoted by Lender for the  
purpose of calculating effective  
rates of interest for Loans making  
reference thereto, on the first day of  
an Interest Period for delivery of funds  
on said date for a period of time  
approximately equal to the number of days  
in such Interest Period and in an amount  
approximately equal to the principal  
amount to which such Interest Period  
applies, or (B) for the purpose of  
calculating effective rates of interest  
for Loans making reference to the Daily  
One Month LIBOR Rate, as the Inter-Bank  
Market Offered Rate in effect from time  
to time for delivery of funds for one  
(1) month in amounts approximately  
equal to the principal amount of such  
Loans. Borrower understands and agrees  
that Lender may base its quotation of the  
Inter-Bank Market Offered Rate upon such  
offers or other market indicators of the  
Inter-Bank Market as Lender in its  
discretion deems appropriate including,  
but not limited to, the rate offered for  
U.S. dollar deposits on the London Inter-  
Bank Market.  
  
 "Lien" shall mean any mortgage,  
pledge, security interest, lien (statutory  
or otherwise), charge, encumbrance,  
hypothecation, assignment, deposit  
arrangement, or other arrangement having  
the practical effect of the foregoing or  
any preference, priority or other security  
agreement or preferential arrangement of  
any kind or nature whatsoever (including  
any conditional sale or other title  
retention agreement and any capital lease  
having the same economic effect as any of  
the foregoing).  
  
 "Loan Documents" shall mean,  
collectively, this Agreement, the Revolving  
Credit Note, the Term Notes, all Notices of  
Borrowing, all Letter of Credit Notices,  
all Letter of Credit Documents, the  
Subsidiary Guarantee Agreement, the Indemnity  
and Contribution Agreement, and any and all  
other instruments, agreements, documents and  
writings executed in connection with any of  
the foregoing, as they may be modified from  
time to time.  
  
 "Loan Parties" shall mean the Borrower  
and the Subsidiary Loan Parties.  
  
 "Loans" shall mean Base Rate Loans,  
Daily One Month LIBOR Loans, Eurodollar Loans  
and/or LOC Loans, or any of them, as the  
context shall require.  
  
 "LOC Fee Payment Date" shall mean the  
last day of each March, June, September and  
December and on the Commitment Termination  
Date.  
  
 "LOC Loan" shall have the meaning  
set forth in Section 2.23.  
  
  
  
 "Material Adverse Effect" shall mean,  
with respect to any event, act, condition or  
occurrence of whatever nature (including any  
adverse determination in any litigation,  
arbitration, or governmental investigation  
or proceeding), whether individually or in  
conjunction with any other event or events,  
act or acts, condition or conditions,  
occurrence or occurrences whether or  
not related, a material adverse change in,  
or a material adverse effect on, (i) the  
business, results of operations, financial  
condition, assets, liabilities or prospects  
of the Borrower and of the Borrower and its  
Subsidiaries taken as a whole, (ii) the  
ability of the Loan Parties to perform any  
of their respective obligations under the  
Loan Documents, (iii) the rights and  
remedies of the Lender under any of the  
Loan Documents or (iv) the legality,  
validity or enforceability of any of  
the Loan Documents.  
  
 "Material Contract" shall mean (a)  
any contract or other agreement, written  
or oral, of the Borrower or any of its  
Subsidiaries involving monetary liability  
of or to any such Person in an amount in  
excess of $1,000,000.00 in the aggregate  
and (b) any other contract, agreement,  
permit or license, written or oral, of the  
Borrower or any of its Subsidiaries the  
failure to comply with which could  
reasonably be expected to have a Material  
Adverse Effect.  
  
 "Material Indebtedness" shall mean  
Indebtedness (other than the Loans) or  
obligations in respect of one or more  
Hedging Agreements, of any one or more  
of the Borrower and the Subsidiaries in  
an aggregate principal amount exceeding  
$3,500,000.00. For purposes of  
determining Material Indebtedness, the  
"principal amount" of the obligations  
of the Borrower or any Subsidiary in  
respect to any Hedging Agreement at any  
time shall be the maximum aggregate  
amount (giving effect to any netting  
agreements) that the Borrower or such  
Subsidiary would be required to pay if  
such Hedging Agreement were terminated  
at such time.  
  
 "Material Subsidiary" shall mean  
at any time any direct or indirect  
Subsidiary of the Borrower having: (a)  
assets in an amount equal to at least  
five percent (5%) of the total assets of  
the Borrower and its Subsidiaries  
determined on a consolidated basis as  
of the last day of the most recent fiscal  
quarter of the Borrower at such time;  
or (b) revenues or net income (losses) in  
an amount equal to at least ten percent  
(10%) of the total revenues or net income  
(losses) of the Borrower and its  
Subsidiaries on a consolidated basis  
for the 12-month period ending on the  
last day of the most recent fiscal quarter  
of the Borrower at such time.  
  
 "Moody's" shall mean Xxxxx'x  
Investors Service, Inc.  
  
 "Multiemployer Plan" shall have  
the meaning set forth in Section 4001(a)  
(3) of ERISA.  
  
 "Notices of Borrowing" shall mean  
a Notice of Revolving Borrowing and/or a  
Notice of Term Borrowing.  
  
 "Notice of Revolving Borrowing"  
shall have the meaning set forth in Section  
2.3.  
  
 "Notice of Term Borrowing" shall  
have the meaning set forth in Section 2.5.  
  
 "Notice of Conversion/Continuation"  
shall mean the notice given by the Borrower  
to the Lender in respect of the conversion  
or continuation of an outstanding Borrowing  
as provided in Section 2.7(b) hereof.  
  
  
  
  
 "Obligations" shall mean all amounts  
owing by the Borrower to the Lender pursuant  
to or in connection with this Agreement, any  
other Loan Document or any Bank Products,  
including without limitation, all principal,  
interest (including any interest accruing  
after the filing of any petition in  
bankruptcy or the commencement of any  
insolvency, reorganization or like proceeding  
relating to the Borrower, whether or not a  
claim for post-filing or post-petition  
interest is allowed in such proceeding),  
all reimbursement obligations under the  
Letter of Credit Documents, fees,  
expenses, indemnification and reimbursement  
payments, costs and expenses (including all  
reasonable fees and expenses of counsel to  
the Lender incurred pursuant to this  
Agreement or any other Loan Document),  
whether direct or indirect, absolute or  
contingent, liquidated or unliquidated,  
now existing or hereafter arising  
hereunder or thereunder, together with all  
renewals, extensions, modifications or  
refinancings thereof.  
  
 "Off-Balance Sheet Liabilities" of  
any Person shall mean (i) any repurchase  
obligation or liability of such Person  
with respect to accounts or notes  
receivable sold by such Person, (ii) any  
liability of such Person under any sale  
and leaseback transactions which do not  
create a liability on the balance sheet  
of such Person, (iii) any liability of  
such Person under any so-called  
"synthetic" lease transaction or (iv)  
any obligation arising with respect to  
any other transaction which is the  
functional equivalent of or takes the  
place of borrowing but which does not  
constitute a liability on the balance  
sheet of such Person.  
  
 "Other Taxes" shall mean any and  
all present or future stamp or  
documentary taxes or any other excise or  
property taxes, charges or similar  
levies arising from any payment made  
hereunder or from the execution,  
delivery or enforcement of, or otherwise  
with respect to, this Agreement or any  
other Loan Document.  
  
 "Participant" shall have the  
meaning set forth in Section 10.4(b).  
  
 "Payment Office" shall mean the  
office of the Lender located at One  
Independent Drive, 25th Floor,  
Xxxxxxxxxxxx, Xxxxxxx 00000, or such  
other location as to which the Lender  
shall have given written notice to  
the Borrower.  
  
 "PBGC" shall mean the Pension  
Benefit Guaranty Corporation referred  
to and defined in ERISA, and any  
successor entity performing similar  
functions.  
  
 "Permitted Encumbrances" shall  
mean  
  
 (a) Liens imposed by law  
for taxes not yet delinquent or which  
are being contested in good faith by  
appropriate proceedings and with  
respect to which adequate reserves  
are being maintained in accordance  
with GAAP;  
  
 (b) statutory Liens of  
landlords and Liens of carriers,  
warehousemen, mechanics, materialmen  
and other Liens imposed by law  
created in the ordinary course of  
business for amounts not yet due or  
which are being contested in good  
faith by appropriate proceedings and  
with respect to which adequate  
reserves are being maintained in  
accordance with GAAP;  
  
 (c) pledges and deposits  
made in the ordinary course of business  
in compliance with workers'  
compensation, unemployment insurance  
and other social security laws or  
regulations;  
  
  
  
  
 (d) deposits to secure  
the performance of bids, trade  
contracts, leases, statutory  
obligations, surety and appeal bonds,  
performance bonds and other  
obligations of a like nature, in  
each case in the ordinary course  
of business;  
  
 (e) judgment and  
attachment Liens not giving rise to  
an Event of Default or Liens  
created by or existing from any  
litigation or legal proceeding that  
are currently being contested in  
good faith by appropriate proceedings  
and with respect to which adequate  
reserves are being  
maintained in accordance with GAAP;  
  
 (f) easements, zoning  
restrictions, rights-of-way and similar  
encumbrances on real property imposed  
by law or arising in the ordinary  
course of business that do not secure  
any monetary obligations and do not  
materially detract from the value of  
the affected property or materially  
interfere with the ordinary conduct  
of business of the Borrower and its  
Subsidiaries taken as a whole; and  
  
 (g) Liens arising under  
ERISA which could not reasonably be  
expected to have a Material Adverse  
Effect; provided, that the term  
"Permitted Encumbrances" shall not  
include any Lien securing Indebtedness.  
  
 "Permitted Investments" shall  
mean:  
  
 (a) direct obligations of,  
or obligations the principal of and  
interest on which are unconditionally  
guaranteed by, the United States (or  
by any agency thereof to the extent such  
obligations are backed by the full faith  
and credit of the United States), in  
each case maturing within one year from  
the date of acquisition thereof;  
  
 (b) commercial paper  
having the highest rating, at the time  
of acquisition thereof, of S&P or Moody's  
and in either case maturing within six  
months from the date of acquisition  
thereof;  
  
 (c) certificates of deposit,  
bankers' acceptances and time deposits  
maturing within 180 days of the date of  
acquisition thereof issued or guaranteed  
by or placed with, and money market  
deposit accounts issued or offered by,  
any domestic office of any commercial  
bank organized under the laws of the  
United States or any state thereof  
which has a combined capital and  
surplus and undivided profits of not  
less than $500,000,000.00;  
  
 (d) fully collateralized  
repurchase agreements with a term of  
not more than 30 days for securities  
described in clause (i) above and  
entered into with a financial  
institution satisfying the criteria  
described in clause (iii) above;  
  
 (e) investments in money  
market mutual funds that are  
registered with the SEC and  
subject to Rule 2a-7 of the  
Investment Company Act of 1940 and  
have a net asset value of $1.00;  
  
 (f) municipal obligations  
issued by any state of the United  
States of America or any municipality  
or other political subdivision of  
any such state rated at least AAA by  
S&P, Aaa by  
  
  
  
Moody's or AAA by Fitch  
at the time of purchase; in each case  
maturing within one year from  
the date of acquisition thereof;  
  
 (g) fixed income mutual  
funds that provide next day liquidity  
and have a duration of one year or less;  
and  
  
 (h) with respect to the  
investments of captive loss funds,  
investments in accordance with the  
investment policy set forth on Annex I.  
  
 "Permitted Subordinated Debt"  
shall mean any Indebtedness of the  
Borrower or any Subsidiary (i) that is  
expressly subordinated to the  
Obligations on terms reasonably  
satisfactory to the Lender, and (ii)  
that is evidenced by an indenture or  
other similar agreement that is in a  
form reasonably satisfactory to the  
Lender.  
  
 "Person" shall mean any  
individual, partnership, firm,  
corporation, association, joint  
venture, limited liability company,  
trust or other entity, or any  
Governmental Authority.  
  
 "Plan" means any employee  
pension benefit plan (other than a  
Multiemployer Plan) subject to the  
provisions of Title IV of ERISA or  
Section 412 of the Code or Section  
302 of ERISA, and in respect of  
which the Borrower or any ERISA  
Affiliate is (or, if such plan were  
terminated, would under Section  
4069 of ERISA be deemed to be) an  
"employer" as defined in Section  
3(5) of ERISA.  
  
 "Regulation D" shall mean  
Regulation D of the Board of  
Governors of the Federal Reserve  
System, as the same may be in  
effect from time to time, and any  
successor regulations.  
  
 "Related Parties" shall mean,  
with respect to any specified Person,  
such Person's Affiliates and the  
respective directors, officers,  
employees, agents and advisors of  
such Person and such Person's  
Affiliates.  
  
 "Release" means any release,  
spill, emission, leaking, dumping,  
injection, pouring, deposit,  
disposal, discharge, dispersal,  
leaching or migration into the  
environment (including ambient air,  
surface water, groundwater, land  
surface or subsurface strata) or  
within any building, structure,  
facility or fixture.  
  
 "Responsible Officer" shall  
mean any of the president, the  
chief executive officer, the  
chief operating officer, the chief  
financial officer, the treasurer or  
a vice president of the  
Borrower or such other representative  
of the Borrower as may be designated  
in writing by any one of the foregoing  
with the consent of the Lender; and,  
with respect to the financial covenants  
only, the chief financial officer or  
the treasurer of the Borrower.  
  
 "Restricted Payment" shall have  
the meaning set forth in Section 7.5.  
  
 "Revolving Commitment" shall mean  
the obligation of the Lender to make  
Revolving  
Loans to or for the account of the  
Borrower in an aggregate principal  
amount not exceeding $40,000,000.  
  
 "Revolving Credit Exposure" shall  
mean, at any time, the sum of the  
outstanding principal amount of  
Revolving Loan plus the Letter of  
Credit Exposure.  
  
 "Revolving Credit Note" shall  
mean a promissory note of the Borrower  
payable to the order of the Lender  
in the principal amount of the  
Revolving Commitment, in substantially  
the form of Exhibit A, as it may be  
modified from time to time.  
  
 "Revolving Loan" shall mean a  
loan made by the Lender to the Borrower  
under its Revolving Commitment, which  
may either be a Daily One Month LIBOR  
Loan or a Eurodollar Loan.  
  
 "S&P" shall mean Standard & Poor's.  
  
 "SPE Subsidiary" shall mean a  
special purpose Subsidiary of the  
Borrower established solely for the  
purpose of owning a parcel of real  
property for permanent financing purposes.  
  
 "Subordinated Debt Documents" shall  
mean any indenture, agreement or similar  
instrument governing any Permitted  
Subordinated Debt.  
  
 "Subsidiary" shall mean, with  
respect to any Person (the "parent"),  
any corporation, partnership, joint  
venture, limited liability company,  
association or other entity the accounts  
of which would be consolidated with  
those of the parent in the parent's  
consolidated financial statements if  
such financial statements were  
prepared in accordance with GAAP as  
of such date, as well as any other  
corporation, partnership, joint  
venture, limited liability company,  
association or other entity (i) of  
which securities or other ownership  
interests representing more than 50% of  
the equity or more than 50% of the  
ordinary voting power, or in the case  
of a partnership, more than 50% of the  
general partnership interests are, as  
of such date, owned, Controlled or held,  
or (ii) that is, as of such date,  
otherwise Controlled, by the parent or  
one or more subsidiaries of the parent  
or by the parent and one or more  
subsidiaries of the parent. Unless  
otherwise indicated, all references  
to "Subsidiary" hereunder shall mean  
a Subsidiary of the Borrower.  
  
 "Subsidiary Guarantee Agreement"  
shall mean the Subsidiary Guarantee  
Agreement, substantially in the form  
of Exhibit C attached hereto, made  
by the Subsidiary Loan Parties in  
favor of the Lender.  
  
 "Subsidiary Loan Party" shall  
mean any Subsidiary that is not a  
Foreign Subsidiary or a SPE Subsidiary.  
  
 "Taxes" shall mean any and all  
present or future taxes, levies,  
imposts, duties, deductions,  
charges or withholdings imposed by  
any Governmental Authority.  
  
 "Term Commitment" shall mean the  
obligation of the Lender to make Term  
Loans to or for the account of the  
Borrower in an aggregate principal  
amount not exceeding $15,000,000.  
  
 "Term Note" shall mean a  
promissory note of the Borrower  
payable to the order of the Lender,  
in substantially the form of Exhibit  
B, as it may be modified from time  
to time.  
  
  
  
 "Term Loan" shall mean a loan  
made by the Lender to the Borrower  
under its Term Commitment, which may  
either be a Daily One Month LIBOR  
Loan or a Eurodollar Loan.  
  
 "Type," when used in reference  
to a Loan or Borrowing, refers to  
whether the rate of interest on such  
Loan, or on the Loans comprising such  
Borrowing, is determined by reference to  
the LIBOR or the Base Rate.  
  
 "Withdrawal Liability" shall mean  
liability to a Multiemployer Plan as a  
result of a complete or partial withdrawal  
from such Multiemployer Plan, as such  
terms are defined in Part I of Subtitle  
E of Title IV of ERISA.  
  
 Section 1.2 Classifications  
of Loans and Borrowings. For purposes of  
this Agreement, Loans may be classified  
and referred to by Type (e.g. a "Eurodollar  
Loan" or "Base Rate Loan" or "Daily One  
Month LIBOR Loan"). Borrowings also may  
be classified and referred to by Type  
(e.g. "Eurodollar Borrowing").  
  
 Section 1.3 Accounting  
Terms and Determination. Unless otherwise  
defined or specified herein, all accounting  
terms used herein shall be interpreted, all  
accounting determinations hereunder shall  
be made, and all financial statements  
required to be delivered hereunder shall  
be prepared, in accordance with GAAP as in  
effect from time to time, applied on a basis  
consistent (except for such changes approved  
by the Borrower's independent public  
accountants) with the most recent audited  
consolidated financial statement of the  
Borrower delivered pursuant to Section  
5.1(a); provided, that if the Borrower  
notifies the Lender that the Borrower wishes  
to amend any covenant in Article 6 to  
eliminate the effect of any change in  
GAAP on the operation of such covenant  
(or if the Lender notifies the Borrower  
that the Lender wishes to amend Article 6  
for such purpose), then the Borrower's  
compliance with such covenant shall be  
determined on the basis of GAAP in effect  
immediately before the relevant change in  
GAAP became effective, until either such  
notice is withdrawn or such covenant is  
amended in a manner satisfactory to the  
Borrower and the Lender.  
  
 Section 1.4 Terms Generally.  
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".  
In the computation of periods of time from  
a specified date to a later specified date,  
the word "from" means "from and including"  
and the word "to" means "to but excluding".  
Unless the context requires otherwise (i)  
any definition of or reference to any  
agreement, instrument or other document  
herein shall be construed as referring to  
such agreement, instrument or other  
document as it was originally executed or  
as it may from time to time be amended,  
supplemented or otherwise modified  
(subject to any restrictions on such  
amendments, supplements or modifications  
set forth herein), (ii) any reference  
herein to any Person shall be construed to  
include such Person's successors and  
permitted assigns, (iii) the words "hereof",  
"herein" and "hereunder" and words of  
similar import shall be construed to refer  
to this Agreement as a whole and not to any  
particular provision hereof, (iv) all  
references to Articles, Sections, Exhibits  
and Schedules shall be construed to refer  
to Articles, Sections, Exhibits and  
Schedules to this  
  
  
  
Agreement and (v) all references to a  
specific time shall be construed to refer  
to the time in the city and state of the  
Lender's principal office, unless  
otherwise indicated.  
  
 ARTICLE 2  
  
AMOUNT AND TERMS OF THE COMMITMENTS  
  
 Section 2.1 General Description  
 of Facility. Subject to and upon the terms  
and conditions herein set forth, (i) the  
Lender hereby establishes in favor of the  
Borrower a revolving credit facility pursuant  
to which the Lender agrees (up to the  
Revolving Commitment) to make Revolving  
Loans to the Borrower in accordance with  
Section 2.2, (ii) the Lender hereby establishes  
in favor of the Borrower a term credit facility  
pursuant to which the Lender agrees (up to the  
Term Commitment) to make Term Loans to the  
Borrower in accordance with Section  
2.4, and (iii) the Lender agrees to issue  
Letters of Credit in accordance with Section  
2.22 hereof; provided, that in no event shall  
the aggregate principal amount of all  
outstanding Revolving Loans plus the  
aggregate Available Amounts of all  
outstanding Letters of Credit exceed at  
any time the Revolving Commitment from  
time to time in effect.  
  
 Section 2.2 Revolving Loans.  
Subject to the terms and conditions set forth  
herein, the Lender agrees to make Revolving  
Loans to or for the account of the Borrower,  
from time to time during the Availability  
Period, in an aggregate principal amount  
outstanding at any time that will not result  
in the Lender's Revolving Credit Exposure  
exceeding the Revolving Commitment. During  
the Availability Period, the Borrower shall  
be entitled to borrow, prepay and reborrow  
Revolving Loans in accordance with the  
terms and conditions of this Agreement;  
provided, that the Borrower may not borrow  
or reborrow should there exist a Default or  
Event of Default.  
  
 Section 2.3 Procedure for  
Revolving Loan Borrowings. The Borrower shall  
give the Lender written notice (or telephonic  
notice promptly confirmed in writing) of each  
Revolving Loan Borrowing substantially in the  
form of Exhibit 2.3 attached hereto (a "Notice  
of Revolving Borrowing") (x) prior to 11:00  
a.m. one (1) Business Day prior to the  
requested date of each Daily One Month LIBOR  
Borrowing, and (y) prior to 11:00 a.m. three  
(3) Business Days prior to the requested date  
of each Eurodollar Borrowing. Each Notice of  
Revolving Borrowing shall be irrevocable and  
shall specify: (i) the aggregate principal  
amount of such Borrowing, (ii) the date of  
such Borrowing (which shall be a Business  
Day), (iii) the Type of such Loan  
comprising such Borrowing, and (iv) in the  
case of a Eurodollar Borrowing, the duration  
of the initial Interest Period applicable  
thereto (subject to the provisions of the  
definition of Interest Period). Each  
Revolving Loan Borrowing shall consist  
entirely of Daily One Month LIBOR Loans  
or Eurodollar Loans, as the Borrower may  
request. The aggregate principal amount of  
each Eurodollar Borrowing and each Daily  
One Month LIBOR Borrowing shall be not less  
than $100,000.00 or a larger multiple of  
$50,000.00. At no time shall the total  
number of outstanding Revolving Loan  
Borrowings which consist of Eurodollar  
Borrowings exceed seven (7). If  
Borrower subscribes to Bank's cash  
management services and such services  
are applicable to the Revolving Loans,  
the terms of such service shall control  
the manner in which funds are transferred  
between the applicable demand deposit  
account and the Revolving Loan for  
credit or debit to the Revolving Loan.  
  
  
  
 Section 2.4 Term Loan  
Commitment.. Subject to the terms and  
conditions set forth herein, the Lender  
agrees to make Term Loans to the Borrower,  
from time to time from the Closing Date  
to the Commitment Termination Date, in  
an aggregate principal amount outstanding  
at any time not to exceed the Term  
Commitment. Each Term Loan shall be in a  
principal amount of not less than  
$1,000,000 or a larger multiple of  
$500,000. The Borrower shall be entitled  
to borrow, repay and reborrow Term Loans  
in accordance with the terms and conditions  
of this Agreement, provided that in no  
event shall the aggregate principal amount  
of all outstanding Term Loans exceed at  
any time the Term Commitment.  
  
 Section 2.5 Procedure for Term  
Borrowing.. The Borrower shall give the  
Lender written notice (or telephonic  
notice promptly confirmed in writing) of  
each Term Loan substantially in the form  
of Exhibit 2.5 attached hereto (a  
"Notice of Term Borrowing") (x) prior  
to 11:00 a.m. one (1) Business Day  
prior to the requested date of each Daily  
One Month LIBOR Borrowing, and (y) prior  
to 11:00 a.m. three (3) Business Days  
prior to the requested date of each  
Eurodollar Borrowing. Each Notice of  
Term Borrowing shall be irrevocable and  
shall specify: (i) the aggregate  
principal amount of such Borrowing,  
(ii) the date of such Borrowing (which  
shall be a Business Day), (iii) the  
Type of Loan comprising such Borrowing  
and (iv) in the case of a Eurodollar  
Borrowing, the duration of the initial  
Interest Period applicable thereto  
(subject to the provisions of the  
definition of Interest Period). Each  
Term Loan Borrowing shall consist entirely  
of Daily One Month LIBOR Loans or  
Eurodollar Loans, as the Borrower may  
request. The aggregate principal amount  
of each Eurodollar Borrowing and each  
Daily One Month LIBOR Borrowing shall  
be not less than $100,000.00 or a  
larger multiple of $50,000.00. At  
no time shall the total number of  
outstanding Term Loan Borrowings  
which consist of Eurodollar Borrowings  
exceed three (3).  
  
 Section 2.6 Funding of  
Borrowings. The Lender will make  
available each Loan to be made by it  
hereunder on the proposed date thereof  
by crediting the amount of such Loan,  
in immediately available funds, by the  
close of business on such proposed date,  
to an account maintained by the  
Borrower with the Lender or at the  
Borrower's option, by effecting a  
wire transfer of such amounts to an  
account designated by the Borrower to  
the Lender.  
  
 Section 2.7 Interest Elections.  
  
 (a) Each Borrowing initially  
shall be of the Type specified in the  
applicable Notice of Borrowing, and in the  
case of a Eurodollar Borrowing, shall  
have an initial Interest Period as  
specified in such Notice of Borrowing.  
Thereafter, the Borrower may elect to convert  
such Borrowing into a different Type or to  
continue such Borrowing, and in the case  
of a Eurodollar Borrowing, may elect  
Interest Periods therefor, all as provided  
in this Section. The Borrower may elect  
different options with respect to different  
portions of the affected Borrowing, and the  
Loans comprising each such portion shall be  
considered a separate Borrowing.  
  
 (b) To make an election pursuant  
to this Section, the Borrower shall give the  
Lender prior written notice (or telephonic  
notice promptly confirmed in writing) of each  
Borrowing (a "Notice of Conversion/  
Continuation") that is to be converted or  
continued, as the case may be, (x) prior to  
10:00 a.m. one (1) Business Day prior to the  
requested date of a conversion into a Daily  
One Month LIBOR Borrowing, and (y) prior to  
11:00 a.m. three (3)  
  
  
  
Business Days prior to a continuation of  
or conversion into a Eurodollar Borrowing.  
Each such Notice of Conversion/Continuation  
shall be irrevocable and shall specify (i)  
the Borrowing to which such Notice of  
Continuation/Conversion applies and if  
different options are being elected  
with respect to different portions thereof,  
the portions thereof that are to be  
allocated to each resulting Borrowing (in  
which case the information to be specified  
pursuant to clauses (iii) and (iv) shall  
be specified for each resulting Borrowing);  
(ii) the effective date of the election made  
pursuant to such Notice of Continuation/  
Conversion, which shall be a Business Day,  
(iii) whether the resulting Borrowing is  
to be a Daily One Month LIBOR Borrowing or  
a Eurodollar Borrowing; and (iv) if the  
resulting Borrowing is to be a Eurodollar  
Borrowing, the Interest Period applicable  
thereto after giving effect to such  
election, which shall be a period contemplated  
by the definition of "Interest Period." If  
any such Notice of Continuation/Conversion  
requests a Eurodollar Borrowing but does not  
specify an Interest Period, the Borrower shall  
be deemed to have selected an Interest Period  
of one month. The principal amount of any  
resulting Borrowing shall satisfy the minimum  
borrowing amount for Eurodollar Borrowings  
and Daily One Month LIBOR Borrowings set  
forth in Section 2.3 and Section 2.5, as  
applicable.  
  
 (c) If, on the expiration of  
any Interest Period in respect of any  
Eurodollar Borrowing, the Borrower shall  
have failed to deliver a Notice of  
Conversion/Continuation, then,  
unless such Borrowing is repaid as  
provided herein, the Borrower shall be  
deemed to have elected to convert such  
Borrowing to a Daily One Month LIBOR  
Borrowing. No Borrowing may be converted  
into, or continued as, a Eurodollar Borrowing  
if a Default or an Event of Default exists,  
unless the Lender shall have otherwise  
consented in writing. No conversion of  
any Eurodollar Loans shall be permitted  
except on the last day of the Interest  
Period in respect thereof. Any Borrowing  
for which the Borrower has not made an  
election, including Borrowings made on  
the Borrower's behalf pursuant to Section  
2.23(b), shall be a Daily One Month LIBOR  
Borrowing.  
  
 Section 2.8 Optional Reduction  
and Termination of Commitments.  
  
 (a) Unless previously terminated,  
the Revolving Commitment and the Term  
Commitment shall terminate on the Commitment  
Termination Date.  
  
 (b) Upon at least three (3)  
Business Days prior written notice (or  
telephonic notice promptly confirmed in  
writing) to the Lender (which notice shall  
be irrevocable), the Borrower may reduce  
the Revolving Commitment in part or terminate  
the Revolving Commitment in whole; provided,  
that (i) any partial reduction pursuant to this  
Section 2.8 shall be in an amount of at least  
$1,000,000.00 and any larger multiple of  
$500,000.00, and (ii) no such reduction shall  
be permitted which would reduce the Revolving  
Commitment to an amount less than the  
outstanding Revolving Credit Exposure of  
the Lender.  
  
 Section 2.9 Repayment of Loans.  
The outstanding principal amount of all  
Revolving Loans and all Term Loan shall  
be due and payable (together with accrued and  
unpaid interest thereon) on the Commitment  
Termination Date.  
  
 Section 2.10 Evidence of  
Indebtedness.  
  
  
  
  
  
 (a) The Lender shall maintain  
in accordance with its usual practice  
appropriate records evidencing the  
indebtedness of the Borrower to the Lender  
resulting from each Loan made by the Lender  
from time to time, including (i) the amounts  
of principal and interest payable thereon  
and paid to the Lender from time to time  
under this Agreement, (ii) the Revolving  
Commitment of the Lender, (iii) the amount  
of each Loan made hereunder by the Lender,  
the Type thereof and the Interest Period  
applicable thereto, (iv) the date of each  
continuation thereof pursuant to Section  
2.7, (v) the date of each conversion of  
all or a portion thereof to another Type  
pursuant to Section 2.7, (vi) the date  
and amount of any principal or interest  
due and payable or to become due and  
payable from the Borrower to the Lender  
hereunder in respect of such Loans,  
(vii) the date, stated amount, Available  
Amount and expiration or termination of each  
outstanding Letter of Credit, and (viii)  
both the date and amount of any sum  
received by the Lender hereunder from the  
Borrower in respect of the Loans. The  
entries made in such records shall be  
prima facie evidence of the existence  
and amounts of the obligations of the  
Borrower therein recorded; provided,  
that the failure or delay of the Lender  
in maintaining or making entries into  
any such record or any error therein  
shall not in any manner affect the  
obligation of the Borrower to repay the  
Loans (both principal and unpaid  
accrued interest) in accordance with  
the terms of this Agreement.  
  
 (b) The Borrower agrees  
that it will execute and deliver to  
the Lender a Revolving Credit Note,  
payable to the order of the Lender.  
Prior to the funding of each Term  
Loan, the Borrower agrees to execute  
and deliver to the Lender a Term Note  
evidencing each Term Loan Borrowing,  
payable to the order of the Lender.  
  
 Section 2.11 Optional  
Prepayments. The Borrower shall have  
the right at any time and from time  
to time to prepay any Borrowing, in  
whole or in part, without premium or  
penalty, by giving irrevocable written  
notice (or telephonic notice promptly  
confirmed in writing) to the Lender  
no later than (i) in the case of  
prepayment of any Eurodollar  
Borrowing, 11:00 a.m. not less than  
three (3) Business Days prior to any  
such prepayment and (ii) in the case  
of any prepayment of any Daily One  
Month LIBOR Borrowing, not less than  
one (1) Business Day prior to the  
date of such prepayment; provided,  
however, that any prepayment of  
Eurodollar Borrowings shall be in a  
minimum amount of $1,000,000.00 and  
any larger multiple of $500,000.00  
and any prepayment of Daily One Month  
LIBOR Borrowings shall be in a  
minimum amount of $500,000.00 and  
larger multiples of $100,000.00.  
Each such notice shall be irrevocable  
and shall specify the proposed date  
of such prepayment and the principal  
amount of each Borrowing or portion  
thereof to be prepaid. If such notice  
is given, the aggregate amount specified  
in such notice shall be due and payable  
on the date designated in such notice,  
together with accrued interest to such  
date on the amount so prepaid in  
accordance with Section 2.12(c);  
provided, that if a Eurodollar Borrowing  
is prepaid on a date other than the last  
day of an Interest Period applicable  
thereto, the Borrower shall also pay  
all amounts required pursuant to  
Section 2.18. Each partial prepayment  
of any Loan shall be in an amount that  
would be permitted in the case of an  
advance of a Revolving Borrowing of the  
same Type pursuant to Section 2.3. Each  
prepayment of a Borrowing shall be applied  
ratably to the Loans comprising such  
Borrowing.  
  
 Section 2.12 Interest on Loans.  
  
 (a) The Borrower shall pay  
interest (i) on each Daily One Month LIBOR  
Loan at the Daily One Month LIBOR rate in  
effect from time to time, plus the Applicable  
Margin in effect from time to time, and  
(ii) on each Eurodollar Loan at LIBOR for  
the applicable Interest Period in effect  
for such Loan, plus the Applicable  
  
  
  
Margin in effect from time to time. In the  
event that any Loans shall from time to  
time be Base Rate Loans, the Borrower shall  
pay interest on each Base Rate Loan at the  
Base Rate in effect from time to time, plus  
the Applicable Margin in effect from time  
to time.  
  
 (b) While an Event of Default  
exists or after acceleration, at the  
option of the Lender, the Borrower shall  
pay interest ("Default Interest") with  
respect to all Eurodollar Loans  
at the rate otherwise applicable for  
the then-current Interest Period plus  
an additional 2% per annum until the  
last day of such Interest Period, and  
thereafter, and with respect to all Base  
Rate Loans, all Daily One Month LIBOR  
Loans, and all other Obligations  
hereunder (other than Loans), at an  
all-in rate in effect for Base Rate  
Loans, plus an additional 2% per annum.  
  
 (c) Interest on the principal  
amount of all Loans shall accrue from and  
including the date such Loans are made to  
but excluding the date of any repayment  
thereof. Interest on all outstanding Daily  
One Month LIBOR Loans and Base Rate Loans  
shall be payable quarterly in arrears on  
the last day of each March, June, September  
and December and on the Commitment  
Termination Date. Interest on all  
outstanding Eurodollar Loans shall be  
payable on the last day of each Interest  
Period applicable thereto, and, in the  
case of any Eurodollar Loans having an  
Interest Period in excess of 90 days,  
on each day which occurs every 90 days  
after the initial date of such Interest  
Period, and on the Commitment Termination  
Date. Interest on any Loan which is  
converted into a Loan of another Type or  
which is repaid or prepaid shall be  
payable on the date of such conversion or  
on the date of any such repayment or  
prepayment (on the amount repaid or  
prepaid) thereof. All Default Interest  
shall be payable on demand.  
  
 (d) The Lender shall determine  
each interest rate applicable to the Loans  
hereunder and shall promptly notify the  
Borrower of such rate in writing (or by  
telephone, promptly confirmed in writing).  
Any such determination shall be conclusive  
and binding for all purposes, absent  
manifest error.  
  
 Section 2.13 Fees.  
  
 (a) Intentionally omitted.  
  
 (b) Commitment Fee. The  
Borrower agrees to pay to the Lender a  
commitment fee, which shall accrue at  
the Applicable Margin (determined daily) on  
the daily amount of the unused Revolving  
Loan portion of the Revolving Commitment  
of the Lender during the Availability  
Period; provided, that if the Lender  
continues to have any Revolving  
Credit Exposure after the Commitment  
Termination Date, then the commitment  
fee shall continue to accrue on the  
amount of the Lender's unused Revolving  
Loan portion of the Revolving Commitment  
from and after the Commitment Termination  
Date to the date that all of  
the Lender's Revolving Credit Exposure  
has been paid in full. Accrued commitment  
fees shall be payable quarterly, in arrears  
on the last day of each March, June,  
September and December of each year and on  
the Commitment Termination Date, commencing  
on the first such date after the Closing  
Date; provided further, that any commitment  
fees accruing after the Commitment  
Termination Date shall be payable on demand.  
For purposes of computing commitment fees  
  
  
  
with respect to the Revolving Commitment,  
the Revolving Commitment shall be deemed  
used to the extent of the outstanding  
Revolving Loans.  
  
 (c) Upfront Fee. The Borrower  
shall pay to the Lender a one-time upfront  
fee equal to $41,250. The upfront fee  
shall be due and payable on the Closing Date.  
  
 (d) Letter of Credit Fee. On  
each LOC Fee Payment Date, the Borrower  
shall pay, in arrears, to the Lender, a  
Letter of Credit fee for each Letter of  
Credit equal to (i) the average daily  
outstanding Available Amount of such  
Letter of Credit since the most recent  
LOC Fee Payment Date (or the date of  
issuance if later) times (ii) the  
Applicable Margin for LIBOR on a per  
annum basis. In addition to the  
foregoing Letter of Credit fees, the  
Lender may charge for its own account,  
fees for drawings, transfers, amendments  
and other fees and charges as may  
be required under the Letter of Credit  
Documents.  
  
 Section 2.14 Computation of  
Interest and Fees. All computations of  
interest and fees hereunder shall be  
made on the basis of a year of 360 days  
for the actual number of days (including  
the first day but excluding the last  
day) occurring in the period for which  
such interest or fees are payable (to  
the extent computed on the basis of  
days elapsed) except that Letter of  
Credit Fees shall be calculated in  
accordance with the Letter of Credit  
Documents. Each determination by the  
Lender of an interest amount or fee  
hereunder shall be made in good faith  
and, except for manifest error, shall  
be final, conclusive and binding for  
all purposes.  
  
 Section 2.15 Inability to  
Determine Interest Rates. If prior to  
the commencement of any Interest Period  
for any Eurodollar Borrowing,  
  
 (a) the Lender shall have  
determined (which determination shall  
be conclusive and binding upon the  
Borrower) that, by reason of  
circumstances affecting the relevant  
interbank market, adequate means do  
not exist for ascertaining LIBOR for  
such Interest Period, or  
  
 (b) the Lender shall have  
determined that the LIBOR does not  
adequately and fairly reflect the cost  
to the Lender of making, funding or  
maintaining the Eurodollar Loans  
for such Interest Period, the Lender  
shall give written notice (or telephonic  
notice, promptly confirmed in writing)  
to the Borrower as soon as practicable  
thereafter. In the case of Eurodollar  
Loans and Daily One Month LIBOR Loans,  
until the Lender shall notify the  
Borrower that the circumstances giving  
rise to such notice no longer exist, (i)  
the obligations of the Lender to make  
Eurodollar Loans or Daily One Month LIBOR  
Loans or to continue or convert outstanding  
Loans as or into Eurodollar Loans or Daily  
One Month LIBOR Loans shall be suspended  
and (ii) all such affected Daily One Month  
LIBOR Loans shall be immediately converted  
into Base Rate Loans and all such affect  
Eurodollar Loans shall be converted into  
Base Rate Loans on the last day of the  
then current Interest Period applicable  
thereto unless the Borrower prepays such  
Loans in accordance with this Agreement.  
Unless the Borrower notifies the Lender  
at least one (1) Business Day before the  
date of any Eurodollar Revolving  
Borrowing for which a Notice of Revolving  
Borrowing has previously been given that  
it elects not to borrow on such date, then  
such Revolving Borrowing shall be made as  
a Base Rate Borrowing.  
  
  
  
 Section 2.16 Illegality. If  
any Change in Law shall make it unlawful or  
impossible for the Lender to make, maintain  
or fund any Eurodollar Loan, the Lender  
shall promptly give notice thereof to the  
Borrower, whereupon until the Lender  
notifies the Borrower that the  
circumstances giving rise to such suspension  
no longer exist, the obligation of the Lender  
to make Eurodollar Loans or Daily One Month  
LIBOR Loans, or to continue or convert  
outstanding Loans as or into Eurodollar  
Loans or Daily One Month LIBOR Loans,  
shall be suspended. In the case of the  
making of a Eurodollar Borrowing, such  
Eurodollar Borrowing shall be made as a  
Base Rate Loan as part of the same  
Borrowing for the same Interest Period  
and if the affected Eurodollar Loan is  
then outstanding, such Loan shall be  
converted to a Base Rate Loan either  
(i) on the last day of the then current  
Interest Period applicable to such  
Eurodollar Loan if the Lender may  
lawfully continue to maintain such  
Loan to such date or (ii) immediately  
if the Lender shall determine that it  
may not lawfully continue to maintain  
such Eurodollar Loan to such date.  
Requests for Base Rate Borrowings shall  
be made prior to 11:00 a.m. one (1)  
Business Day prior to the requested  
date of each Base Rate Borrowing.  
  
 Section 2.17 Increased Costs.  
  
 (a) If any Change in Law  
shall:  
  
 (i) impose, modify  
or deem applicable any reserve, special  
deposit, capital adequacy or similar  
requirement that is not otherwise included  
in the determination of LIBOR hereunder  
against assets of, deposits with or for  
the account of, or credit extended by,  
the Lender; or  
 (ii) impose on the  
Lender or the Eurodollar interbank  
market any other condition affecting  
this Agreement or any Eurodollar Loans  
made by the Lender; and the result of  
the foregoing is to increase the cost to  
the Lender of making, converting into,  
continuing or maintaining a Eurodollar  
Loan or to reduce the amount received or  
receivable by the Lender hereunder  
(whether of principal, interest or any  
other amount), then the Borrower  
shall promptly pay, upon written notice  
from and demand by the Lender on the  
Borrower, to the Lender, within five  
(5) Business Days after the date of  
such notice and demand, additional  
amount or amounts sufficient to  
compensate the Lender for such additional  
costs incurred or reduction suffered.  
  
 (b) If the Lender shall have  
determined that on or after the date of  
this Agreement any Change in Law regarding  
capital requirements has or would have the  
effect of reducing the rate of return on  
the Lender's capital (or on the capital  
of the Lender's parent corporation) as a  
consequence of its obligations hereunder  
to a level below that which the Lender  
or the Lender's parent corporation could  
have achieved but for such Change in Law  
(taking into consideration the Lender's  
policies or the policies of the Lender's  
parent corporation with respect to capital  
adequacy) then, from time to time, within  
five (5) Business Days after receipt by the  
Borrower of written demand by the Lender,  
the Borrower shall pay to the Lender such  
additional amounts as will compensate the  
Lender or the Lender's parent corporation  
for any such reduction suffered.  
  
  
  
  
 (c) A certificate of the  
Lender setting forth the amount or  
amounts necessary to compensate the Lender  
or the Lender's parent corporation, as the  
case may be, specified in paragraph (a) or  
(b) of this Section shall be delivered to  
the Borrower and shall be conclusive,  
absent manifest error. The Borrower shall  
pay any the Lender such amount or amounts  
within 10 days after receipt thereof.  
  
 (d) Failure or delay on the  
part of the Lender to demand compensation  
pursuant to this Section shall not  
constitute a waiver of the Lender's  
right to demand such compensation.  
  
 Section 2.18 Funding Indemnity.  
In the event of (a) the payment of any  
principal of a Eurodollar Loan other than  
on the last day of the Interest Period  
applicable thereto (including as a result  
of an Event of Default), (b) the  
conversion or continuation of a  
Eurodollar Loan other than on the last  
day of the Interest Period applicable  
thereto or (c) the failure by the  
Borrower to borrow, prepay, convert or  
continue any Eurodollar Loan on the date  
specified in any applicable notice  
(regardless of whether such notice is  
withdrawn or revoked), in any such  
event, the Borrower shall compensate  
the Lender, within five (5) Business  
Days after written demand from the  
Lender, for any loss, cost or expense  
attributable to such event. In the case  
of a Eurodollar Loan, such loss, cost or  
expense shall be deemed to include an  
amount determined by the Lender to be the  
excess, if any, of (A) the amount of  
interest that would have accrued on the  
principal amount of such Eurodollar Loan  
if such event had not occurred at LIBOR  
applicable to such Eurodollar Loan for the  
period from the date of such event to the  
last day of the then current Interest  
Period therefor (or in the case of a  
failure to borrow, convert or continue,  
for the period that would have been the  
Interest Period for such Eurodollar Loan)  
over (B) the amount of interest that would  
accrue on the principal amount of such  
Eurodollar Loan for the same period if  
LIBOR were set on the date such Eurodollar  
Loan was prepaid or converted or the date  
on which the Borrower failed to borrow,  
convert or continue such Eurodollar Loan.  
A certificate as to any additional  
amount payable under this Section 2.18  
submitted to the Borrower by the Lender  
shall be conclusive, absent manifest error.  
  
 Section 2.19 Taxes.  
  
 (a) Any and all payments by or  
on account of any obligation of the Borrower  
hereunder shall be made free and clear of  
and without deduction for any Indemnified  
Taxes or Other Taxes; provided, that if the  
Borrower shall be required to deduct any  
Indemnified Taxes or Other Taxes from such  
payments, then (i) the sum payable shall  
be increased as necessary so that after  
making all required deductions (including  
deductions applicable to additional sums  
payable under this Section) the Lender  
shall receive an amount equal to the sum  
it would have received had no such  
deductions been made, (ii) the Borrower  
shall make such deductions, and (iii) the  
Borrower shall pay the full amount  
deducted to the relevant Governmental  
Authority in accordance with applicable law.  
  
 (b) In addition, the Borrower  
shall pay any Other Taxes to the relevant  
Governmental Authority in accordance with  
applicable law.  
  
 (c) The Borrower shall indemnify  
the Lender, within five (5) Business Days  
after written demand therefor, for the full  
amount of any Indemnified Taxes or Other  
Taxes paid  
  
  
  
  
by the Lender on or with respect to any  
payment by or on account of any obligation  
of the Borrower hereunder (including  
Indemnified Taxes or Other Taxes imposed  
or asserted on or attributable to amounts  
payable under this Section) and any  
penalties, interest and reasonable  
expenses arising therefrom or with  
respect thereto, whether or not such  
Indemnified Taxes or Other 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 the Lender shall be  
conclusive absent manifest error.  
  
 (d) As soon as practicable  
after any payment of Indemnified Taxes or  
Other Taxes by the Borrower to a  
Governmental Authority, the Borrower  
shall deliver to the Lender the original  
or a certified copy of a receipt issued  
by such Governmental Authority evidencing  
such payment, a copy of the return  
reporting such payment or other evidence  
of such payment reasonably satisfactory  
to the Lender.  
  
 Section 2.20 Payments Generally.  
  
 (a) The Borrower shall make  
each payment required to be made by it  
hereunder (whether of principal, interest,  
fees, or of amounts payable under Section  
2.17, Section 2.18 or Section 2.19, or  
otherwise) prior to 11:00 a.m.,  
Jacksonville, Florida time, on the  
date when due, in immediately available  
funds, without set-off or counterclaim.  
Any amounts received after such time on  
any date may, in the discretion of the  
Lender, be deemed to have been received  
on the next succeeding Business Day for  
purposes of calculating interest thereon.  
All such payments shall be made to the  
Lender at the Payment Office. If any  
payment hereunder shall be due on a day  
that is not a Business Day, the date  
for payment shall be extended to the  
next succeeding Business Day, and, in  
the case of any payment accruing  
interest, interest thereon shall be  
made payable for the period of such  
extension. All payments hereunder  
shall be made in Dollars.  
  
 (b) If at any time  
insufficient funds are received by  
and available to the Lender to pay  
fully all amounts of principal,  
interest and fees then due hereunder,  
such funds shall be applied (i) first,  
towards payment of interest and fees  
then due hereunder, ratably among  
the parties entitled thereto in  
accordance with the amounts of  
interest and fees then due to such  
parties, and (ii) second, towards  
payment of principal then due  
hereunder, ratably among the  
parties entitled thereto in accordance  
with the amounts of principal then  
due to such parties.  
  
 Section 2.21 Mitigation of  
Obligations. If the Lender requests  
compensation under Section 2.17, or  
if the Borrower is required to pay  
any additional amount to the Lender  
or any Governmental Authority for the  
account of the Lender pursuant to  
Section 2.19, then the Lender shall  
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  
sole judgment of the Lender, such  
designation or assignment (i)  
would eliminate or reduce amounts  
payable under Section 2.17 or  
Section 2.19, as the case may  
be, in the future and (ii) would  
not subject the Lender to any  
unreimbursed cost or expense and  
would not otherwise be disadvantageous  
to the Lender. The Borrower hereby  
agrees to pay all costs and expenses  
incurred by the Lender in connection  
with such designation or assignment.  
  
  
  
  
 Section 2.22 Letter of  
Credit Commitment. Subject to the  
terms and conditions set forth herein  
and provided no Default exists, the  
Lender agrees to issue Letters of  
Credit from time to time during the  
Availability Period; provided,  
however, that (a) no Letter of  
Credit shall have a stated  
expiration date later than five (5)  
Business Days prior to the  
Commitment Termination Date, as it  
may be extended, (b) the aggregate  
Available Amount of all  
Letters of Credit outstanding at any  
time shall not exceed the lesser of  
(i) $20,000,000 and (ii)  
the difference between the Revolving  
Commitment and the Revolving Credit  
Exposures of the Lender.  
  
 Section 2.23 Procedure  
for Issuance and Reimbursement of  
Letters of Credit.  
  
 (a) The Borrower shall  
give the Lender a written request  
for the issuance of a Letter of  
Credit (a "Letter of Credit  
Notice"), and shall provide to  
the Lender such Letter of  
Credit Documents as it may require.  
  
 (b) Should there occur  
any drawing under a Letter of Credit,  
such drawing shall constitute a  
Notice of Revolving Borrowing from  
the Borrower (which the Borrower  
hereby irrevocably authorizes)  
requesting the Lender to make a  
Revolving Loan on the date of such  
drawing in an amount equal to the  
amount of such drawing. The  
proceeds of such Revolving  
Loan, to be funded in accordance  
with Section 2.6, shall be used  
exclusively for the reimbursement  
 of such drawing.  
  
 (c) If for any reason,  
a Revolving Loan may not be (as  
determined in the sole discretion  
of the Lender) or is not, made in  
accordance with the provisions of  
Subsection (b) above, then the  
Lender shall be considered to have  
made a loan (the "LOC Loan") to the  
Borrower in the amount of such  
drawing. The LOC Loan shall be  
payable on demand, shall be a  
Base Rate Loan, and shall be an  
Obligation hereunder.  
  
 Section 2.24 Increased  
Cost.  
  
 (a) If a Change of Law  
or compliance by the Lender with  
any request or directive (whether  
or not having the force of law) of  
any Governmental Authority either:  
(i) shall subject the Lender to  
any tax, duty or other charge with  
respect to any Letter of Credit or  
its obligations hereunder or under  
any Letter of Credit Documents, or  
(ii) shall impose, modify or  
deem applicable any reserve,  
special deposit insurance or similar  
requirement (including, without  
limitation, any such requirements  
imposed by the Board of Governors  
of the Federal Reserve System)  
against assets of, deposits with  
or for the account of, or credit  
extended by, the Lender  
or its parent; or (iii) shall  
impose on the Lender or its parent  
any other similar condition relating  
to the Letter of Credit or its  
obligations hereunder or under any  
Letter of Credit Documents; and  
the result of any of the foregoing  
is to increase the cost to the Lender  
or its parent of making or  
maintaining the Letter of Credit or  
its obligations hereunder or under  
any Letter of Credit Documents, or  
to reduce the amount received or  
receivable by the Lender or its  
parent under this Agreement, under  
the Letter of Credit or hereunder  
or under the other Loan Documents  
with respect thereto, by an amount  
deemed by the Lender to be  
material, the Lender shall notify  
the Borrower in writing describing  
such circumstances and the amount  
needed to compensate the Lender or  
its parent. Within ten (10) days  
after demand by the Lender,  
Borrower shall pay to the  
  
  
  
Lender such additional amount or  
amounts as will compensate the  
Lender or its parent for such  
increased cost or reduction.  
  
 (b) If the Lender  
shall have determined that a  
Change of Law or compliance  
by the Lender with any request or  
directive regarding capital  
adequacy (whether or not having  
the force of law) of any Authority,  
has or would have the effect of  
reducing the rate of return on  
the Lender's (or its parent's)  
capital as a consequence of the  
issuance or continuance of any  
Letter of Credit or its ability  
to make Loans or LOC Loans upon  
the occurrence of draws under  
any Letter of Credit (taking into  
consideration the Lender's (or its  
parent's) policies with respect  
to capital adequacy), by an amount  
deemed by the Lender to be material,  
then from time to time, the Lender  
shall notify the Borrower in  
writing describing such  
circumstances and the amount  
needed to compensate the Lender  
or its parent. Within ten (10)  
days after demand by the  
Lender, Borrower shall pay to  
the Lender such additional  
amount or amounts as will  
compensate the Lender (or its  
parent's) for such reduction.  
  
 (c) In determining  
amounts owing pursuant to  
Subsections (a) and (b), the  
Lender may use any reasonable  
averaging, allocation and  
attribution methods.  
  
 Section 2.25 Obligations  
 Absolute. The obligations of  
Borrower under the Letter of Credit  
Documents and this Agreement with  
respect to reimbursement for drawings  
under Letters of Credit shall be  
absolute, unconditional and  
irrevocable, and shall be paid  
strictly in accordance with the  
terms of this Agreement and the  
Letter of Credit Documents,  
under all circumstances  
whatsoever, including, without  
limitation, the following  
circumstances:  
  
 (a) any lack of  
validity or enforceability of  
the Letter of Credit, any of the  
Loan Documents or any other  
agreement or instrument related  
thereto;  
  
 (b) any amendment  
or waiver of or any consent to  
departure from the terms of  
the Letter of Credit, any of  
the Loan Documents or any other  
agreement or instrument related  
thereto;  
  
 (c) the existence  
of any claim, setoff, defense  
or other right which Borrower  
may have at any time against  
the Lender, any beneficiary or  
any transferee of the Letter  
of Credit (or any Person for  
whom the Lender, any such  
beneficiary or any such  
transferee may be acting),  
or any other Person, whether  
in connection with this  
Agreement, the Loan Documents,  
the Letter of Credit, or any  
unrelated transaction;  
  
 (d) any statement,  
draft or other document presented  
under the 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  
whatsoever; or  
  
 (e) the surrender  
or impairment of any security  
for the performance or  
observance of any of the terms  
of this Agreement, or any of the  
other Loan Documents.  
  
 Section 2.26 Letter  
of Credit Documents. The  
obligations of the Borrower  
and rights of the Lender  
herein with respect to Letters  
of Credit shall be in addition  
to the obligations of the  
Borrower and rights of the Lender  
under the Letter of Credit Documents.  
  
  
  
  
 ARTICLE 3  
  
 CONDITIONS PRECEDENT TO LOANS  
  
 Section 3.1 Conditions  
To Effectiveness. The obligation  
of the Lender to make Loans and/or  
issue Letters of Credit hereunder  
shall not become effective until  
the date on which each of the  
following conditions is satisfied  
(or waived in accordance with  
Section 10.2).  
  
 (a) The Lender shall  
have received all fees and other  
amounts due and payable on or prior  
to the Closing Date, including  
reimbursement or payment of all  
out-of-pocket expenses (including  
reasonable fees, charges and  
disbursements of counsel to the  
Lender) required to be reimbursed  
or paid by the Borrower hereunder,  
under any other Loan Document  
and under any agreement with the  
Lender.  
  
 (b) The Lender (or  
its counsel) shall have received  
the following:  
  
 (i) a  
counterpart of this Agreement  
signed by or on behalf of each  
party thereto or written evidence  
satisfactory to the Lender (which  
 may include telecopy  
transmission of a signed  
signature page of this Agreement)  
 that such party has signed a  
counterpart of this Agreement;  
  
 (ii) a duly  
executed Revolving Credit Note  
payable to the Lender;  
  
 (iii) a duly  
executed Subsidiary Guarantee  
Agreement and Indemnity  
and Contribution Agreement;  
  
 (iv) a  
certificate of the Secretary  
or Assistant Secretary of each  
Loan Party in the form of  
Exhibit 3.1(b)(iv), attaching  
and certifying copies of its  
bylaws and of the resolutions  
of its boards of directors,  
authorizing the execution,  
delivery and performance of the  
Loan Documents to which it is  
a party and certifying the name,  
title and true signature of each  
officer of such Loan Party  
executing the Loan Documents to  
which it is a party;  
  
 (v) certified  
 copies of the articles of  
incorporation or other charter  
documents of each Loan Party,  
together with certificates of  
good standing or existence  
from the Secretary of State of  
the jurisdiction of  
incorporation of such Loan  
Party and each other  
jurisdiction where such Loan  
Party is required to be  
qualified to do business as  
a foreign corporation;  
  
 (vi) a  
favorable written opinion of  
counsel to the Loan Parties,  
addressed to the Lender, and  
covering such matters relating  
to the Loan Parties, the Loan  
Documents and the transactions  
contemplated therein as the  
Lender shall reasonably request;  
  
 (vii) a  
certificate in the form of  
Exhibit 3.1(b)(vii), dated  
the Closing Date and signed  
by a Responsible Officer,  
confirming compliance with  
the conditions set forth in  
paragraphs (a), (b) and (c)  
of Section 3.2;  
  
 (viii)  
duly executed Notices of  
Borrowing, Letter of Credit  
Notices and Letter of Credit  
Documents, if applicable;  
  
  
  
 (ix) a  
duly executed Closing  
Statement and Disbursement  
Agreement;  
  
 (x)  
certified copies of all  
consents, approvals,  
authorizations,  
registrations or filings,  
if any, required to be made  
or obtained by each Loan  
Party in connection with the  
Loans;  
  
 (xi)  
Borrower shall have delivered  
the notice required by Section  
2.8(b) of the Original Credit  
Agreement not less than three  
Business Days prior to the  
initial funding of Loans  
and/or issuance of Letters of  
Credit hereunder; and  
  
 (xii) all  
other documents deemed  
reasonably necessary by the  
Lender. Upon the effectiveness  
of this Agreement, the Loans,  
if any, outstanding under the  
Original Credit Agreement will  
be funded hereunder, and all  
Letters of Credit issued and  
outstanding under the Original  
Credit Agreement shall  
automatically, without further  
action on the part of Borrower,  
be deemed to constitute  
outstanding letters of credit  
issued under this Agreement.  
  
 (c) Nothing has  
come to the attention of the  
Lender regarding (i) pending or  
threatened litigation involving  
the Borrower or any Subsidiary  
or (ii) compliance by the Borrower  
and each Subsidiary with  
environmental, OSHA and other  
public health, safety or welfare  
laws and regulations, employee  
benefit plans or insurance  
coverages that would be reasonably  
likely to have a Material Adverse  
Effect.  
  
 Section 3.2 Each  
Credit Event. The obligation  
of the Lender to make a Loan  
or issue a Letter of Credit is  
subject to the satisfaction of  
the following conditions:  
  
 (a) at the time of  
and immediately after giving  
effect to such Borrowing or  
issuance of a Letter of Credit,  
no Default or Event of Default  
shall exist; and  
  
 (b) all  
representations and warranties  
of each Loan Party set forth  
in the Loan Documents shall be  
true and correct in all material  
respects on and as of the date of  
such Borrowing or issuance of a  
Letter of Credit, in each case  
before and after giving effect  
thereto;  
  
 (c) since the date  
of the most recent financial  
statements of the Borrower  
described in Section 5.1(a),  
there shall have been no  
change which has had or could  
reasonably be expected to have  
a Material Adverse Effect;  
  
 (d) the Lender shall  
have received such other  
documents, certificates,  
information or legal opinions  
as the Lender may reasonably  
request, all in form and substance  
reasonably satisfactory to the  
Lender; and  
  
 (e) with respect to  
each issuance of a Letter of  
Credit, the Lender shall have  
received all LOC Documents it  
may require.  
  
 Each Borrowing or issuance  
of a Letter of Credit shall be  
deemed to constitute a  
representation and warranty by  
the Borrower on the date thereof  
as to the matters specified in  
paragraphs (a), (b) and (c) of  
this Section 3.2.  
  
  
  
 ARTICLE 4  
  
 REPRESENTATIONS AND WARRANTIES  
  
 The Borrower represents and  
warrants to the Lender as follows:  
  
 Section 4.1 Existence;  
Power. The Borrower and each of  
the Guarantors (i) is duly  
organized, validly existing and  
in good standing as a corporation  
under the laws of the  
jurisdiction of its organization,  
(ii) has all requisite power and  
authority to carry on its business  
as now conducted, and (iii) is  
duly qualified to do business,  
and is in good standing, in each  
jurisdiction where such  
qualification is required, except  
where a failure to be so qualified  
could not reasonably be expected  
to result in a Material Adverse  
Effect.  
  
 Section 4.2  
Organizational Power; Authorization.  
The execution, delivery and performance  
by each Loan Party of the Loan  
Documents to which it is a party are  
within such Loan Party's organizational  
powers and have been duly authorized by  
all necessary organizational, and if  
required, stockholder action. This  
Agreement has been duly executed and  
delivered by the Borrower, and  
constitutes, and each other Loan  
Document to which any Loan  
Party is a party, when executed  
and delivered by such Loan Party,  
will constitute, valid and binding  
obligations of the Borrower or such  
Loan Party (as the case may be),  
enforceable against it in accordance  
with their respective terms, except  
as may be limited by applicable  
bankruptcy, insolvency,  
reorganization, moratorium, or  
similar laws affecting the  
enforcement of creditors'  
rights generally and by general  
principles of equity.  
  
 Section 4.3  
Governmental Approvals; No  
Conflicts. The execution,  
delivery and performance by  
the Borrower of this Agreement,  
and by each Loan Party of the  
other Loan Documents to which it  
is a party (a) do not require any  
consent or approval of,  
registration or filing with, or  
any action by, any Governmental  
Authority, except those as have  
been obtained or made and are in  
full force and effect or where  
the failure to do so, individually  
or in the aggregate, could not  
reasonably be expected to have a  
Material Adverse Effect, (b) will  
not violate any applicable law or  
regulation or the charter, bylaws  
or other organizational documents  
of the Borrower or any of its  
Subsidiaries or any order of any  
Governmental Authority, (c) will  
not violate or result in a default  
under any indenture, material  
agreement or other material  
instrument binding on the Borrower  
or any of its Subsidiaries or any  
of their assets or give rise to  
a right thereunder to require any  
payment to be made by the Borrower  
or any of its Subsidiaries  
and (d) will not result in the  
creation or imposition of any  
Lien on any asset of the Borrower  
or any of its Subsidiaries, except  
Liens (if any) created under the  
Loan Documents.  
  
 Section 4.4 Financial  
Statements. The Borrower has  
furnished to the Lender  
the audited consolidated balance  
sheet of the Borrower and its  
Subsidiaries as of September 30,  
2011 and the related consolidated  
statements of income, shareholders'  
equity and cash flows for  
the fiscal year then ended and  
interim financial statements for  
each fiscal quarter through the  
fiscal quarter ended June 30, 2012.  
Such financial statements fairly  
present the consolidated  
financial condition of the  
Borrower and its Subsidiaries  
as of such dates and the consolidated  
results of operations for such  
periods in conformity with GAAP  
consistently applied, subject, in  
the case of interim statements,  
to year end audit adjustments and  
the absence of footnotes. Since  
the date of the unaudited financial  
statements described above, there  
have been no changes with  
  
  
  
  
respect to the Borrower and its  
Subsidiaries which have had or  
could reasonably be expected to  
have, singly or in the aggregate,  
a Material Adverse Effect.  
  
 Section 4.5 Litigation  
and Environmental Matters.  
  
 (a) No litigation,  
investigation or proceeding of or  
before any arbitrators or  
Governmental Authorities is pending  
against or, to the knowledge of the  
Borrower, threatened against or  
affecting the Borrower or any of  
its Subsidiaries (i) as to which  
there is a reasonable possibility  
of an adverse determination that  
could reasonably be expected to  
have, either individually or in  
the aggregate, a Material Adverse  
Effect or (ii) which in any manner  
draws into question the validity  
or enforceability of this Agreement  
or any other Loan Document.  
  
 (b) Except for the  
matters set forth on Schedule 4.5,  
neither the Borrower nor  
any of its Subsidiaries (i) to the  
best of its actual knowledge, has  
failed to comply with any  
Environmental Law or to obtain,  
maintain or comply with any permit,  
license or other approval  
required under any Environmental  
Law, (ii) to the best of its actual  
knowledge, has become subject to  
any Environmental Liability, (iii)  
has received notice of any claim  
with respect to any Environmental  
Liability or (iv) knows of any  
basis for any Environmental  
Liability.  
  
 Section 4.6 Compliance  
with Laws and Agreements. To the  
best of its actual knowledge, the  
Borrower and each Subsidiary is in  
compliance with (a) all applicable  
laws, rules, regulations and orders  
of any Governmental Authority, and  
(b) all indentures, agreements  
or other instruments binding upon  
it or its properties, except where  
non-compliance, either singly  
or in the aggregate, could not  
reasonably be expected to result  
in a Material Adverse Effect.  
  
 Section 4.7 Investment  
Company Act, Etc. Neither the  
Borrower nor any of its Subsidiaries  
is (a) an "investment company," as  
defined in, or subject to regulation  
under, the Investment Company Act of  
1940, as amended, (b) a "holding  
company" as defined in, or subject  
to regulation under, the Public  
Utility Holding Company Act of  
1935, as amended or (c) otherwise  
subject to any other regulatory  
scheme limiting its ability to  
incur debt.  
  
 Section 4.8 Taxes.  
The Borrower and its Subsidiaries  
and each other Person for whose  
taxes the Borrower or any  
Subsidiary could become liable  
have timely filed or caused  
to be filed all Federal income  
tax returns and all other material  
tax returns that are required to be  
filed by them, and have paid all  
taxes shown to be due and payable  
on such returns or on any  
assessments made against it or its  
property and all other taxes, fees  
or other charges imposed on it  
or any of its property by any  
Governmental Authority, except (i)  
to the extent the failure to do so  
would not have a Material Adverse  
Effect or (ii) where the same are  
currently being contested in  
good faith by appropriate proceedings  
and for which the Borrower or such  
Subsidiary, as the case may be, has  
set aside on its books adequate  
reserves. The charges, accruals  
and reserves on the books of the  
Borrower and its Subsidiaries in  
respect of such taxes are adequate,  
and no tax liabilities that could  
be materially in excess of the  
amount so provided are anticipated.  
  
 Section 4.9 Margin  
Regulations. None of the proceeds  
of any of the Loans will be used  
for "purchasing" or "carrying"  
any "margin stock" with the  
respective meanings of  
  
  
  
  
each of such terms under Regulation  
U as now and from time to time  
hereafter in effect or for  
any purpose that violates the  
provisions of the applicable  
Margin Regulations.  
  
 Section 4.10 ERISA.  
No ERISA Event has occurred or is  
reasonably expected to occur that,  
when taken together with all other  
such ERISA Events for which  
liability is reasonably expected to  
occur, could reasonably be expected  
to result in a Material Adverse  
Effect. The present value of all  
accumulated benefit obligations under  
each Plan (based on the assumptions  
used for purposes of Statement of  
Financial Standards No. 87) did not,  
as of the date of the most recent  
financial statements reflecting such  
amounts, exceed the fair market value  
of the assets of such Plan, and the  
present value of all accumulated  
benefit obligations of all  
underfunded Plans (based on the  
assumptions used for purposes of  
Statement of Financial Standards  
No. 87) did not, as of the date  
of the most recent financial  
statements reflecting such  
amounts, exceed the fair market  
value of the assets of all such  
underfunded Plans.  
  
 Section 4.11 Ownership  
of Property.  
  
 (a) Each of the  
Borrower and its Subsidiaries  
has good title to, or valid  
leasehold interests in, all  
of its real and personal  
property material to the  
operation of its business.  
  
 (b) Each of the Borrower  
 and its Subsidiaries owns, or is  
licensed, or otherwise has the right,  
to use, all patents, trademarks,  
service marks, trade names, copyrights  
and other intellectual property  
material to its business, and the  
use thereof by the Borrower and  
its Subsidiaries does not infringe  
on the rights of any other Person,  
except for any such infringements  
that, individually or in the  
aggregate, would not have a  
Material Adverse Effect.  
  
 Section 4.12 Disclosure.  
The Borrower has disclosed to the  
Lender all agreements, instruments,  
and corporate or other restrictions  
to which the Borrower or any of its  
Subsidiaries is subject, and all  
other matters known to any of them,  
that, individually or in the  
aggregate, could reasonably be  
expected to result in a Material  
Adverse Effect. None of the  
reports (including without limitation  
all reports that the Borrower is  
required to file with the  
Securities and Exchange Commission),  
financial statements, certificates  
or other information furnished by  
or on behalf of the Borrower to the  
Lender in connection with the  
negotiation of this Agreement or  
any other Loan Document or delivered  
hereunder or thereunder (as modified  
or supplemented by any other  
information so furnished) contain  
any material misstatement of  
fact or omits to state any material  
fact necessary to make the statements  
therein, taken as a whole, in light  
of the circumstances under which they  
were made, not misleading.  
  
 Section 4.13 Labor  
Relations. There are no strikes,  
lockouts or other material  
labor disputes or grievances  
against the Borrower or any of its  
Subsidiaries, or, to the Borrower's  
knowledge, threatened against or  
affecting the Borrower or any of its  
Subsidiaries, and no  
significant unfair labor practice,  
charges or grievances are pending  
against the Borrower or any of  
its Subsidiaries, or to the Borrower's  
knowledge, threatened against any of  
them before any Governmental Authority.  
All payments due from the Borrower or  
any of its Subsidiaries pursuant to  
the provisions of any collective  
bargaining agreement have been paid  
or accrued as a liability on the books  
of the Borrower or any such  
Subsidiary, except where the failure  
to do so could not reasonably be  
expected to have a Material Adverse  
Effect.  
  
  
  
  
 Section 4.14 Subsidiaries.  
 Schedule 4.14 sets forth the name  
of, the ownership interest of the  
Borrower in, the jurisdiction of  
incorporation of, and the type of,  
each Subsidiary and identifies each  
Subsidiary that is a Subsidiary  
Loan Party, in each case as of the  
Closing Date.  
  
 Section 4.15 Legal Name.  
The exact legal name of the  
Borrower, including spelling and  
punctuation, as such name appears in  
its articles of incorporation, is as  
set forth in the preamble hereof.  
The Borrower's state issued  
organizational identification number  
is M90326.  
  
 Section 4.16 No  
Restrictions on Dividends. There  
are no restrictions on dividends  
or repayment of intercompany loans  
in any agreements of any Subsi  
diary Loan Party.  
  
 Section 4.17 Solvency.  
The fair saleable value of the  
Borrower's assets, measured on a going  
concern basis, exceeds all probable  
liabilities, including those to be  
incurred pursuant to this Agreement.  
Neither the Borrower nor any Subsidiary  
has incurred, or believes that it will  
incur after giving effect to the  
transactions contemplated by this  
Agreement, debts beyond its ability  
to pay such debts as they become due.  
  
 Section 4.18 Insurance.  
The property and liability insurance  
maintained by the Borrower and its  
Subsidiaries on and as of the date  
hereof complies in all respects with  
the requirements set forth in Section  
5.8. All such insurance policies are  
in full force and effect. All premiums  
(if any) due on such insurance policies  
or renewals thereof have been paid and  
there is no default under any of such  
insurance policies. Neither the  
Borrower nor its Subsidiaries have  
received any notice or other communication  
from any issuer of such insurance policies  
canceling or materially amending any such  
insurance policies, any deductibles or  
retained amounts thereunder, or the  
annual or other premiums payable  
thereunder, and no such cancellation  
or material amendment is threatened.  
  
 Section 4.19 Outstanding  
Indebtedness. On the date of this  
Agreement, the Borrower has no  
outstanding Indebtedness except (i)  
as reflected on the financial statements  
of the Borrower which have been provided  
to the Lender or disclosed in Schedule 7.1  
attached hereto and (ii) Indebtedness  
incurred in the ordinary course of business  
subsequent to the date of such financial  
statements.  
  
 Section 4.20 Letters of  
Credit Issued Outside the Provisions of  
the Agreement. On the date of this  
Agreement, the Borrower has no letters  
of credit issued outside the provisions  
of this Agreement for its account except  
as disclosed on Schedule 4.20 attached  
hereto.  
  
 ARTICLE 5  
  
 AFFIRMATIVE COVENANTS  
  
 The Borrower covenants and agrees  
that so long as the Lender has a Revolving  
Commitment or Term Commitment hereunder or  
the principal of and interest on any Loan  
or any fee remains unpaid:  
  
  
  
  
 Section 5.1 Financial  
Statements and Other Information. The  
Borrower will deliver to the Lender:  
  
 (a) as soon as available  
and in any event within 120 days after  
the end of each fiscal year of Borrower,  
(i) a copy of the annual audited report  
for such fiscal year for the Borrower and  
its Subsidiaries, containing a consolidated  
balance sheet of the Borrower and its  
Subsidiaries as of the end of such fiscal  
year and the related consolidated  
statements of income, stockholders'  
equity and cash flows (together with  
all footnotes thereto) of the Borrower  
and its Subsidiaries for such fiscal year,  
setting forth in each case in comparative  
form the figures for the previous fiscal  
year, all in reasonable detail and reported  
on by Xxxxxxx Xxxxx & Co. LLP or  
other independent certified public  
accountants of nationally recognized  
standing chosen by Borrower and  
acceptable to the Lender, (without  
a "going concern" or like  
qualification, exception or explanation  
and without any qualification or  
exception as to scope of such audit)  
to the effect that such financial  
statements present fairly in all  
material respects the financial  
condition and the results of  
operations of the Borrower and its  
Subsidiaries for such fiscal year  
on a consolidated basis in accordance  
with GAAP and that the examination by  
such accountants in connection with  
such consolidated financial statements  
has been made in accordance with  
generally accepted auditing standards  
and (ii) annual unaudited consolidating  
balance sheets and income statements  
for the Borrower and its Subsidiaries;  
  
 (b) as soon as available  
and in any event within 60 days after  
the end of each of the first three  
fiscal quarters of each fiscal year  
of the Borrower, (i) an unaudited  
consolidated balance sheet of the  
Borrower and its Subsidiaries as of  
the end of such fiscal quarter with  
comparative information for the  
previous year end, (ii) the related  
unaudited consolidated statements  
of income of the Borrower and its  
Subsidiaries for such fiscal quarter  
and the then elapsed portion of such  
fiscal year, setting forth in each  
case in comparative form the figures for  
the corresponding quarter and the  
corresponding portion of Borrower's  
previous fiscal year, and  
(iii) consolidated statements of cash  
flow for the then elapsed portion of  
such fiscal year with  
comparative information for the  
corresponding portion of the previous  
fiscal year, all certified by  
the chief financial officer or  
treasurer of the Borrower as  
presenting fairly in all material  
respects the financial condition and  
results of operations of the Borrower  
and its Subsidiaries on a  
consolidated basis in accordance with  
GAAP, subject to normal year-end audit  
adjustments and the absence of  
footnotes;  
  
 (c) concurrently with the  
delivery of the financial statements  
or information referred to in clauses  
(a) and (b) above, (i) a certificate  
of a Responsible Officer, (1)  
certifying, to the best of his actual  
knowledge, as to whether there  
exists a Default or Event of Default  
on the date of such certificate, and  
if a Default or an Event of Default  
then exists, specifying the details  
thereof and the action which the  
Borrower has taken or proposes to take  
with respect thereto and (2) stating  
whether any change in GAAP or the  
application thereof has occurred  
since the date of the Borrower's  
audited financial statements  
referred to in Section 4.4 and,  
if any change has occurred, specifying  
the effect of such change on the  
financial statements accompanying such  
certificate and (ii) a Covenant  
Compliance Certificate;  
  
 (d) promptly after the  
same become publicly available,  
copies of all periodic and other  
reports, proxy statements and other  
materials filed with the Securities  
and Exchange Commission, or any  
Governmental Authority succeeding to  
any or all functions of said  
  
  
  
Commission, or with any national  
securities exchange, or distributed  
by the Borrower to its shareholders  
generally, as the case may be; and  
  
 (e) promptly following  
any request therefor, such other  
information regarding  
the results of operations, business  
affairs and financial condition of  
the Borrower or any Subsidiary as  
the Lender may reasonably request.  
  
 Section 5.2 Notices of  
Material Events. The Borrower will  
furnish to the Lender prompt written  
notice of the following:  
  
 (a) the occurrence of  
 any Default or Event of Default;  
  
 (b) the filing or  
commencement of any action, suit  
or proceeding by or before  
any arbitrator or Governmental  
Authority against or, to the  
knowledge of the Borrower, affecting  
the Borrower or any Subsidiary which,  
if adversely determined, could  
reasonably be expected to  
result in a Material Adverse Effect;  
  
 (c) the occurrence of any  
event or any other development by which the  
Borrower or any of its Subsidiaries (i)  
fails to comply with any Environmental  
Law or to obtain, maintain or comply  
with any permit, license or other  
approval required under any  
Environmental Law, (ii) becomes  
subject to any Environmental Liability,  
(iii) receives notice of any claim with  
respect to any Environmental Liability,  
or (iv) becomes aware of any basis for  
any Environmental Liability and in each  
of the preceding clauses, which  
individually or in the aggregate, could  
reasonably be expected to result in a  
Material Adverse Effect;  
  
 (d) the occurrence of any  
ERISA Event that alone, or together  
with any other ERISA Events that have  
occurred, could reasonably be expected  
to result in a Material Adverse Effect;  
  
 (e) the acquisition or  
formation of a new Material Subsidiary;  
  
 (f) transfers of assets  
to non-Material Subsidiaries outside  
the ordinary course of business; and  
  
 (g) any other development  
that results in, or could reasonably be  
expected to result in, a Material  
Adverse Effect.  
  
 Each notice delivered under this  
Section shall be accompanied by a written  
statement of a Responsible Officer setting  
forth the details of the event or  
development requiring such notice  
and any action taken or proposed to be  
taken with respect thereto.  
  
 Section 5.3 Existence;  
Conduct of Business. The Borrower will, a  
nd will cause each of its Subsidiaries to,  
do or cause to be done all things  
necessary to preserve, renew and maintain  
in full force and effect its legal  
existence and its respective rights,  
licenses, permits, privileges,  
franchises, patents, copyrights,  
trademarks and trade names material  
to the conduct of its business and will  
continue to engage in substantially the  
same business as presently conducted  
or such other businesses that are  
reasonably related thereto; provided,  
that nothing in this Section shall  
prohibit any merger, consolidation,  
liquidation or dissolution permitted  
under Section 7.3.  
  
  
  
  
 Section 5.4 Compliance with  
Laws, Etc. The Borrower will, and will  
cause each of its Subsidiaries to,  
comply with all laws, rules, regulations  
and requirements of any Governmental  
Authority applicable to its properties,  
except where the failure to do so, either  
individually or in the aggregate, could  
not reasonably be expected to result  
in a Material Adverse Effect.  
  
 Section 5.5 Payment of  
Obligations. The Borrower will, and  
will cause each of its Subsidiaries to,  
pay and discharge at or before maturity,  
all of its obligations and liabilities  
(including without limitation all tax  
liabilities and claims that could result  
in a statutory Lien) before the same  
shall become delinquent or in default,  
except where (a) the validity or amount  
thereof is being contested in good  
faith by appropriate proceedings, (b)  
the Borrower or such Subsidiary has set  
aside on its books adequate reserves  
with respect thereto in accordance with  
GAAP and (c) the failure to make  
payment pending such contest could  
not reasonably be expected to result  
in a Material Adverse Effect.  
  
 Section 5.6 Books and  
Records. The Borrower will, and  
will cause each of its  
Subsidiaries to, keep proper books  
of record and account in which full,  
true and correct entries  
shall be made of all dealings and  
transactions in relation to its  
business and activities to the extent  
necessary to prepare the consolidated  
financial statements of Borrower in  
conformity with GAAP.  
  
 Section 5.7 Visitation,  
Inspection, Etc. The Borrower will,  
and will cause each of its  
Subsidiaries to, permit any  
representative of the Lender, on  
reasonable advance written notice,  
to visit and inspect its properties,  
to examine its books and records and  
to make copies and take extracts  
therefrom, and to discuss its affairs,  
finances and accounts with any of  
its officers and with its independent  
certified public accountants, all at  
such reasonable times and as often as  
the Lender may reasonably request after  
reasonable prior notice to the Borrower.  
  
 Section 5.8 Maintenance of  
Properties; Insurance. The Borrower  
will, and will cause each of its  
Subsidiaries to, (a) keep and maintain  
all property material to the conduct of  
its business in good working order and  
condition, ordinary wear and tear  
except where the failure to do so,  
either individually or it the aggregate,  
could not reasonably be expected to  
result in a Material Adverse Effect  
and (b) maintain with financially  
sound and reputable insurance  
companies, insurance with respect to  
its properties and business, and the  
properties and business of its  
Subsidiaries, against loss or damage  
of the kinds and at least in the amounts  
as maintained by the Borrower and the  
Subsidiaries on the date of this  
Agreement; provided that such amounts  
shall be appropriately adjusted for  
inflation and for changes in the nature  
and volume of the business conducted by  
the Borrower and its Subsidiaries;  
provided further, however, that for  
purposes of this Section 5.8, the  
self-insurance program of the Borrower  
and its Subsidiaries with  
respect to comprehensive and collision  
damage to its highway vehicles,  
comprehensive general and automotive  
liability and property damage and as  
in effect on the date hereof is hereby  
deemed adequate insurance against  
losses.  
  
 Section 5.9 Use of  
Proceeds. The Borrower will use the  
proceeds of the Loans  
to repay the outstanding Loans under  
the Original Credit Agreement made by  
Bank of America and SunTrust to  
refinance existing debt, finance  
working capital needs, capital  
expenditures and for other general  
corporate purposes of the Borrower  
and its Subsidiaries. No  
  
  
  
part of the proceeds of any Loan  
will be used, whether directly or  
indirectly, for any purpose that  
would violate any rule or regulation  
of the Board of Governors of the  
Federal Reserve System, including  
Regulations T, U or X.  
  
 Section 5.10 Additional  
Subsidiaries. If any additional  
Material Subsidiary is acquired or  
formed after the Closing Date, the  
Borrower will, within ten (10)  
business days after such Material  
Subsidiary is acquired or formed,  
notify the Lender thereof and will,  
if such Subsidiary is not a Foreign  
Subsidiary or a SPE Subsidiary, cause  
such Material Subsidiary to  
become a Subsidiary Loan Party by  
executing agreements in the form of  
Annex I to Exhibit D and Annex I to  
Exhibit E in form and substance  
satisfactory to the Lender and will  
cause such Material Subsidiary to  
deliver simultaneously therewith  
similar documents applicable to such  
Material Subsidiary required under  
Section 3.1 as reasonably requested by  
the Lender. If the Borrower forms or  
acquires additional Subsidiaries  
("non-Material Subsidiaries") which are  
neither Material Subsidiaries, Foreign  
Subsidiaries nor SPE Subsidiaries, at  
such time as the assets, revenues or  
income of all such non-Material  
Subsidiaries when considered on a  
consolidated basis would reach the  
level required for a Subsidiary to  
qualify as a Material Subsidiary;  
all then existing non-Material  
Subsidiaries and all subsequently  
formed or acquired non-Material  
Subsidiaries shall become Subsidiary  
Loan Parties by complying with the  
requirements set forth in this Section  
5.10.  
  
 Section 5.11 Deposit  
Relationship. The Borrower will, and  
will cause each of its Subsidiaries to,  
maintain its primary depository and cash  
management accounts with the Lender.  
  
 ARTICLE 6  
  
 FINANCIAL COVENANTS  
  
 The Borrower covenants and agrees  
that so long as the Lender has a Revolving  
Commitment or Term Commitment hereunder  
or the principal of or interest on or  
any Loan remains unpaid or any fee  
remains unpaid:  
  
 Section 6.1 Leverage Ratio.  
The Borrower will have, as of the end of  
each fiscal quarter of the Borrower,  
commencing with the fiscal quarter  
ending September 30, 2012, a  
Leverage Ratio of not greater  
than 55%.  
  
 Section 6.2 Fixed Charge  
Coverage Ratio. The Borrower will  
have, as of the end of each fiscal  
quarter of the Borrower, commencing  
with the fiscal quarter ending  
September 30, 2012, a Fixed Charge  
Coverage Ratio of not less than  
2.25:1.0, calculated based on a  
rolling four quarter basis.  
  
For purposes of this Article 6,  
notwithstanding anything in this  
Agreement to the contrary, for  
purposes of calculating the Leverage  
Ratio and the Fixed Charge Coverage  
Ratio, the Indebtedness of any Person  
shall include non-recourse  
indebtedness of such Person and  
of any partnership or joint venture  
in which such Person is a general  
partner or a joint venturer, except  
that with respect to Indebtedness  
of MRP SE Waterfront Residential,  
LLC ("Waterfront Residential"),  
shall only include the Borrower's  
pro rata share of Waterfront  
Residential non-  
  
  
  
recourse indebtedness based on  
Borrower's (or its applicable  
Subsidiary's) ownership percentage  
in such entity.  
  
 ARTICLE 7  
  
 NEGATIVE COVENANTS  
  
 The Borrower covenants and  
agrees that so long as the Lender  
has a Revolving Commitment or Term  
Commitment hereunder or the principal  
of or interest on any Loan remains  
unpaid or any fee remains unpaid:  
  
 Section 7.1 Indebtedness.  
The Borrower will not, and will not  
permit any of its Subsidiaries to,  
create, incur, assume or suffer to  
exist any Indebtedness, except:  
  
 (a) Indebtedness created  
pursuant to the Loan Documents;  
  
 (b) Indebtedness existing  
on the date hereof and set forth on  
Schedule 7.1 (including unborrowed  
portions of any lines of credit  
shown thereon) and extensions,  
renewals and replacements of any  
such Indebtedness that do not  
increase the outstanding principal  
amount thereof (immediately prior  
to giving effect to such extension,  
renewal or replacement) or shorten  
the maturity or the weighted  
average life thereof;  
  
 (c) Indebtedness of  
the Borrower or any Subsidiary in  
a principal amount which, when  
combined with Indebtedness permitted  
by Section 7.1(h) and Section 7.1(i),  
does not exceed $25,000,000.00 in the  
aggregate and which is incurred to  
finance the acquisition, construction  
or improvement of any fixed or capital  
assets, including Capital Lease  
Obligations and any Indebtedness  
assumed in connection with the  
acquisition of any such assets of  
secured by a Lien on any such assets  
prior to the acquisition thereof;  
provided, that such Indebtedness is  
incurred prior to or within 90 days  
after such acquisition or the  
completion of such construction  
or improvements or extensions,  
renewals, and replacements of any  
such Indebtedness that do not  
increase the outstanding principal  
amount thereof (immediately prior to  
giving effect to such extension,  
renewal or replacement) or shorten  
the maturity or the weighted  
average life thereof;  
  
 (d) Permitted  
Subordinated Debt;  
  
 (e) Indebtedness in  
respect of obligations under  
Hedging Agreements permitted by  
Section 7.10;  
  
 (f) current Indebtedness  
incurred in the ordinary course of  
business, trade letters of credit  
and Indebtedness arising in  
connection with letters of credit  
obtained in the ordinary course of  
business;  
  
 (g) Indebtedness in the  
form of mortgage loans in connection  
with permanent financing of improved  
commercial real properties;  
  
  
  
  
  
 (h) other unsecured  
Indebtedness outstanding at any  
time which, when added to  
Indebtedness permitted by Section  
7.1(c) and (i), does not exceed  
$25,000,000.00 in the aggregate; and  
  
 (i) Indebtedness of the  
Borrower or any Subsidiary in a  
principal amount which, when combined  
with Indebtedness permitted by Section  
7.1(c) and (h), does not exceed  
$25,000,000.00 in the aggregate, which  
is secured by a Lien on any fixed or  
capital assets, including Capital  
Lease Obligations, and which does  
not otherwise qualify as Indebtedness  
permitted under the terms of Section  
7.1(c).  
  
 Section 7.2 Negative  
Pledge. The Borrower will not,  
and will not permit any  
of its Subsidiaries to, create,  
incur, assume or suffer to exist  
any Lien on any of its assets or  
property now owned or hereafter  
acquired except:  
  
 (a) Permitted  
Encumbrances;  
  
 (b) any Liens on any  
property or assets of the Borrower  
or any Subsidiary existing on the  
Closing Date set forth on Schedule  
7.2; provided, that such Lien shall  
not apply to any other property or  
asset of the Borrower or any  
Subsidiary;  
  
 (c) purchase money  
Liens upon or in any fixed or  
capital assets to secure the  
purchase price or the cost of  
construction or improvement of such  
fixed or capital assets or to  
secure Indebtedness incurred solely  
for the purpose of financing the  
acquisition, construction or improvement  
of such fixed or capital assets  
(including Liens securing any Capital  
Lease Obligations); provided, that (i)  
such Lien secures Indebtedness  
permitted by Section 7.1(c), (ii)  
such Lien attaches to such asset  
concurrently or within 90 days  
after the acquisition, improvement or  
completion of the construction thereof;  
(iii) such Lien does not extend to any  
other asset; and (iv) the Indebtedness  
secured thereby does not exceed the  
cost of acquiring, constructing or  
improving such fixed or capital assets;  
  
 (d) any Lien (i) existing  
on any asset of any Person at the time  
such Person becomes a Subsidiary of the  
Borrower, (ii) existing on any asset  
of any Person at the time such Person  
is merged with or into the Borrower or  
any Subsidiary of the Borrower or (iii)  
existing on any asset prior to the  
acquisition thereof by the Borrower  
or any Subsidiary of the Borrower;  
provided, that any such Lien was not  
created in the contemplation of any  
of the foregoing and any such Lien  
secures only those obligations which  
it secures on the date that such Person  
becomes a Subsidiary or the date of  
such merger or the date of such  
acquisition;  
  
 (e) Liens securing  
Indebtedness permitted under Section  
7.1;  
  
 (f) Liens or pledges of  
securities of the Borrower or any  
Subsidiary to governmental agencies  
pursuant to the Borrower's or any  
Subsidiary's insurance program;  
  
 (g) Rights reserved or  
vested in governmental authority  
which do not materially impair the  
use of such property;  
  
 (h) extensions,  
renewals, or replacements of any  
Lien referred to in paragraphs  
(a) through (g) of this Section;  
provided, that the principal amount  
of the  
  
  
  
Indebtedness secured thereby is not  
increased and that any such  
extension, renewal or replacement  
is limited to the assets originally  
encumbered thereby;  
  
 (i) Liens arising under  
that certain Contingent Mortgage  
and Security Agreement dated as of  
May 18, 2012, from Lake Louisa, LLC,  
a Florida limited liability  
company and a Subsidiary of Borrower,  
in favor of Cemex Construction  
Materials, LLC, a Delaware limited  
liability company, in connection  
with a Mining Lease dated May 18,  
2012, related to certain real  
property located in Lake County,  
Florida, as more specifically  
described in such mortgage; and  
  
 (j) Liens on improved  
commercial real properties in  
connection with permanent financing  
thereof.  
  
 Section 7.3 Fundamental  
Changes.  
  
 (a) Except as permitted  
by Section 7.6, the Borrower will  
not, and will not permit any  
Subsidiary to, merge into or  
consolidate into any other Person,  
or permit any other Person to merge  
into or consolidate with it, or sell,  
lease, transfer or otherwise dispose  
of (in a single transaction or a  
series of transactions) all or  
substantially all of its assets (in  
each case, whether now owned or  
hereafter acquired) or all or  
substantially all of the stock  
of any of its Subsidiaries (in  
each case, whether now owned or  
hereafter acquired) or liquidate or  
dissolve; provided, that if at the  
time thereof and immediately after  
giving effect thereto, no Default or  
Event of Default shall have occurred  
and be continuing (i) the Borrower  
or any Subsidiary may  
merge with a Person if the Borrower  
(or such Subsidiary if the Borrower  
is not a party to such  
merger) is the surviving Person,  
(ii) any Subsidiary may merge into  
another Subsidiary; provided,  
that if any party to such merger is  
a Subsidiary Loan Party, the  
Subsidiary Loan Party shall be  
the surviving Person, (iii) any  
Subsidiary may sell, transfer,  
lease or otherwise dispose of all  
or substantially all of its assets  
to the Borrower or to a Subsidiary  
Loan Party, and (iv) any Subsidiary  
(other than a Subsidiary Loan Party)  
may liquidate or dissolve if the  
Borrower determines in good faith  
that such liquidation or dissolution  
is in the best interests of the  
Borrower and is not materially  
disadvantageous to the Lender;  
provided, that any such merger  
involving a Person that is not a  
wholly-owned Subsidiary immediately  
prior to such merger shall  
not be permitted unless also  
permitted by Section 7.4.  
Notwithstanding the foregoing, (i)  
the Borrower and the Guarantors  
shall be permitted to transfer real  
properties to SPE Subsidiaries for  
the purpose of permanent financing  
of such properties, and (ii) the  
Borrower shall be permitted to  
split into two or more entities  
(collectively, the "Resulting  
Companies"), provided that (A) no  
Default or Event of Default shall  
have occurred and be continuing,  
(B) the Borrower shall continue  
in existence as one of the Resulting  
Companies, (C) the Resulting  
Companies shall execute and deliver  
a agreement in form and substance  
acceptable to the Lender in its sole  
discretion, pursuant to which the  
Resulting Companies not a party  
hereto agree to join in and  
become a party to, and subject to  
the terms and conditions of, this  
Agreement, and the Resulting  
Companies acknowledge, agree and  
confirm that the financial  
covenants contained herein shall  
thereafter be applicable to the  
Resulting Companies on a combined  
basis, (D) the Resulting  
Companies other than Borrower  
shall have delivered to Lender, in  
form and substance acceptable  
to Lender in its sole discretion,  
the promissory notes, contribution  
agreements, certificates, and  
other instruments contemplated by  
Section 3.1(b)(ii), (iv), (v), (vi),  
(x) and (xi) of this Agreement,  
(E) Lender shall have approved the  
form of any indemnification and/or  
  
  
  
  
subordination agreement by and among  
the Resulting Companies, or any of  
them, and (F) the Resulting Companies  
shall have reimbursed Lender for the  
costs and expenses incurred by Lender  
and its counsel in connection with  
such transaction.  
  
 (b) The Borrower will not,  
and will not permit any of its  
Subsidiaries to, engage to any material  
extent in any business other than  
businesses of substantially the same type  
conducted by the Borrower and its  
Subsidiaries on the date hereof and  
businesses reasonably related thereto.  
  
 Section 7.4 Investments,  
Loans, Etc. The Borrower will not, and  
will not permit any of its Subsidiaries  
to, purchase, hold or acquire (including  
pursuant to any merger with  
any Person that was not a wholly-owned  
Subsidiary prior to such merger), any  
common stock, evidence of indebtedness  
or other securities (including any  
option, warrant, or other right to  
acquire any of the foregoing) of, make  
or permit to exist any loans or  
advances to, Guarantee any  
obligations of, or make or permit to  
exist any investment or any other  
interest in, any other Person  
(all of the foregoing being collectively  
called "Investments"), or purchase or  
otherwise acquire (in  
one transaction or a series of  
transactions) any assets of any other  
Person ("Acquisitions"), except:  
  
 (a) Investments (other  
than Permitted Investments) existing  
on the date hereof and set forth on  
Schedule 7.4;  
  
 (b) Permitted Investments;  
  
 (c) Guarantees constituting  
Indebtedness permitted by Section 7.1;  
provided, that the aggregate principal  
amount of Indebtedness of Subsidiaries  
that are not Subsidiary Loan  
Parties that is Guaranteed by any Loan  
Party shall be subject to the limitation  
set forth in clause (d) hereof;  
  
 (d) Investments made by the  
Borrower in or to any Subsidiary and by  
any Subsidiary to the Borrower or in or  
to another Subsidiary;  
  
 (e) loans or advances to  
employees, officers or directors of the  
Borrower or any Subsidiary in the ordinary  
course of business for travel, relocation  
and related expenses;  
  
 (f) Hedging Agreements  
permitted by Section 7.10;  
  
 (g) Real estate investments  
or joint ventures that are typical in  
the Borrower's ordinary course of  
business;  
  
 (h) Other Investments  
which in the aggregate do not exceed  
$5,000,000.00 in any fiscal year of  
the Borrower; and  
  
 (i) Acquisitions not to  
exceed in the aggregate in any fiscal  
year of the Borrower 15% of Consolidated  
Net Worth (measured at the end of the  
immediately preceding fiscal year);  
provided that Acquisitions in the  
aggregate in any fiscal year of the  
Borrower up to 20% of Consolidated  
Net Worth (measured at the end of  
the immediately preceding fiscal year)  
may be made after delivery to the  
Lender of pro forma consolidated  
financial statements,  
  
  
  
  
certified by the Borrower and reasonably  
acceptable to the Lender, showing that  
after giving effect to such Acquisitions  
no Default or Event of Default would exist.  
  
 Section 7.5 Restricted  
Payments. After the date of this  
Agreement, the Borrower will not, and  
will not permit its Subsidiaries to,  
declare or make, or agree to pay or  
make, directly or indirectly, any  
dividend on any class of its stock, or  
make any payment on account of, or set  
apart assets for a sinking or other  
analogous fund for, the purchase,  
redemption, retirement, defeasance or  
other acquisition of, any Indebtedness  
subordinated to the Obligations of the  
Borrower or any options, warrants, or  
other rights to purchase such  
Indebtedness, whether now or hereafter  
outstanding (each, a "Restricted Payment"),  
except for (i) dividends not exceeding  
66.6% of Consolidated Net Income  
subsequent to September 30,  
2003, (ii) dividends payable by the  
Borrower solely in shares of any  
class of its common stock,  
(iii) Restricted Payments made by any  
Subsidiary to the Borrower or to  
another Subsidiary Loan Party and  
(iv) cash redemptions of the common  
stock of the Borrower; provided,  
that the exceptions permitted  
pursuant to clauses (i) through (iv)  
shall apply only if no Default or  
Event of Default has occurred and is  
continuing at the time such dividend  
or other payment is paid or redemption  
is made.  
  
 Section 7.6 Sale of  
Assets. The Borrower will not, and  
will not permit any of its Subsidiaries  
to, convey, sell, lease, assign,  
transfer or otherwise dispose of, any  
of its assets, business or property,  
whether now owned or hereafter  
acquired, or, in the case of any  
Subsidiary, issue or sell any shares  
of such Subsidiary's common stock to,  
any Person other than the Borrower or  
any wholly-owned Subsidiary of the  
Borrower (or to qualify directors if  
required by applicable law), except:  
  
 (a) the sale or other  
disposition for fair market value of  
obsolete or worn out property or other  
property not necessary for operations  
disposed of in the ordinary course of  
business;  
  
 (b) the sale of assets  
and Permitted Investments in the  
ordinary course of the  
transportation and real estate  
business of the Borrower and its  
Subsidiaries including, without  
limitation, the sale of any parcel  
of real property for fair market  
value;  
  
 (c) the sale or other  
disposition of such other assets in  
an aggregate amount not to exceed  
$5,000,000.00 during the term of  
this Agreement; provided, however,  
that such amount shall not include  
(i) intercompany mergers of  
Subsidiaries, (ii) sales, leases  
or transfers of assets of any  
Subsidiary to the Borrower or any  
other Subsidiary, and (iii) mergers or  
consolidations with the Borrower or  
any Subsidiary so long as the Borrower  
or such Subsidiary shall be the  
surviving corporation and no Default  
or Event of Default shall then exist;  
and  
  
 (d) the transfer of real  
properties to SPE Subsidiaries for  
the purpose of permanent financing  
of such properties, in the ordinary  
course of business of the Borrower.  
  
 Section 7.7 Transactions  
with Affiliates. The Borrower will  
not, and will not permit any of its  
Subsidiaries to, sell, lease or  
otherwise transfer any property or  
assets to, or purchase, lease or  
otherwise acquire any property or  
assets from, or otherwise engage in  
any other transactions with, any of its  
Affiliates, except (a) in the ordinary  
course of business at  
  
  
  
  
prices and on terms and conditions  
not less favorable to the Borrower  
or such Subsidiary than could be  
obtained on an arm's-length basis  
from unrelated third parties including,  
without limitation, those affiliate  
transactions disclosed in the  
Borrower's Form 10-K as on file with  
the Securities and Exchange Commission  
on the date hereof, (b) transactions  
between or among the Borrower and  
the Guarantors not involving any  
other Affiliates and (c) any  
Restricted Payment permitted by  
Section 7.5.  
  
 Section 7.8 Restrictive  
Agreements. The Borrower will not,  
and will not permit any Subsidiary  
to, directly or indirectly, enter  
into, incur or permit to exist any  
agreement that prohibits, restricts  
or imposes any condition upon (a)  
the ability of the Borrower or any  
Subsidiary to create, incur or permit  
any Lien upon any of its assets or  
properties, whether now  
owned or hereafter acquired, or (b)  
the ability of any Subsidiary to pay  
dividends or other distributions with  
respect to its common stock, to make  
or repay loans or advances to the  
Borrower or any other Subsidiary, to  
Guarantee Indebtedness of the  
Borrower or any other Subsidiary or  
to transfer any of its property or  
assets to the Borrower or any  
Subsidiary of the Borrower; provided,  
that (i) the foregoing shall not apply  
to restrictions or conditions imposed  
by law or by this Agreement or any  
other Loan Document, (ii) the foregoing  
shall not apply to customary restrictions  
and conditions contained in agreements  
relating to the sale of a Subsidiary  
pending such sale, provided such  
restrictions and conditions apply  
only to the Subsidiary that is  
sold and such sale is permitted  
hereunder, (iii) clause (a) shall  
not apply to restrictions or  
conditions imposed by any agreement  
relating to secured Indebtedness  
permitted by this Agreement if such  
restrictions and conditions apply  
only to the property or assets  
securing such Indebtedness and (iv)  
clause (a) shall not apply to  
customary provisions in leases and  
other contracts restricting the  
assignment thereof.  
  
 Section 7.9 Sale and  
Leaseback Transactions. The  
Borrower will not, and will not  
permit any of the Subsidiaries to,  
enter into any arrangement,  
directly or indirectly,  
whereby it shall sell or transfer  
any property, real or personal,  
used or useful in its business,  
whether now owned or hereinafter  
acquired, and thereafter rent or  
lease such property or other  
property that it intends to use for  
substantially the same purpose or  
purposes as the property sold  
or transferred.  
  
 Section 7.10 Hedging  
Agreements. The Borrower will not,  
and will not permit any of the  
Subsidiaries to, enter into any  
Hedging Agreement, other than  
Hedging Agreements entered into  
in the ordinary course of business  
to hedge or mitigate risks to which  
the Borrower or any Subsidiary is  
exposed in the conduct of its business  
or the management of its liabilities.  
Solely for the avoidance of doubt, the  
Borrower acknowledges that a Hedging  
Agreement entered into for speculative  
purposes or of a speculative nature  
(which shall be deemed to include  
any Hedging Agreement under which the  
Borrower or any of the Subsidiaries is  
or may become obliged to make any  
payment (i) in connection with the  
purchase by any third party of any  
common stock or any Indebtedness or  
(ii) as a result of changes in the  
market value of any common stock or  
any Indebtedness) is not a Hedging  
Agreement entered into in the ordinary  
course of business to hedge or  
mitigate risks.  
  
 Section 7.11 Amendment  
to Material Documents. The Borrower  
will not, and will not permit any  
Subsidiary to, amend, modify or  
waive any of its rights in a manner  
  
  
  
  
materially adverse to the Lender under  
(a) its certificate of incorporation,  
bylaws or other organizational  
documents or (b) Material Contracts.  
  
 Section 7.12 Permitted  
Subordinated Indebtedness  
  
 (a) The Borrower will not,  
and will not permit any of its  
Subsidiaries to (i) prepay, redeem,  
repurchase or otherwise acquire for  
value any Permitted Subordinated Debt,  
or (ii) make any principal, interest  
or other payments on any Permitted  
Subordinated Debt that is not expressly  
permitted by the subordination  
provisions of the Subordinated Debt  
Documents.  
  
 (b) The Borrower will not,  
and will not permit any of its  
Subsidiaries to, agree to or permit  
any amendment, modification or waiver  
of any provision of any Subordinated Debt  
Document if the effect of such amendment,  
modification or waiver is to (i) increase  
the interest rate on such Permitted  
Subordinated Debt for change (to  
earlier dates) the dates upon which  
principal and interest are due thereon;  
(ii) alter the redemption, prepayment  
or subordination provisions thereof;  
(iii) alter the covenants and events  
of default in a manner that would make  
such provisions more onerous or  
restrictive to the Borrower or any  
such Subsidiary; or (iv) otherwise  
increase the obligations of the  
Borrower or any Subsidiary in respect  
of such Permitted Subordinated Debt  
or confer additional rights upon the  
holders thereof which individually or  
in the aggregate would be adverse to  
the Borrower or any of its Subsidiaries  
or to the Lender.  
  
 Section 7.13 Accounting  
Changes. The Borrower will not, and  
will not permit any Subsidiary to,  
make any significant change in  
accounting treatment or reporting  
practices, except as required or  
preferred by GAAP, or change the  
fiscal year of the Borrower or of any  
Subsidiary, except to change the  
fiscal year of a Subsidiary to  
conform its fiscal year to that of  
the Borrower.  
  
 Section 7.14 Name Changes.  
The Borrower will not, and will not  
permit any Material Subsidiary or  
Guarantor to, without thirty (30) days  
prior written notice, change its  
name, its place of business or, if  
more than one, chief executive office,  
or its mailing address or organizational  
identification number if it has one.  
  
 ARTICLE 8  
  
 EVENTS OF DEFAULT  
  
 Section 8.1 Events of  
Default. If any of the following  
events (each an "Event of Default")  
shall occur:  
  
 (a) the Borrower shall  
fail to pay any principal of any  
Loan when and as the same shall  
become due and payable, whether  
at the due date thereof or at a  
date fixed for prepayment or  
otherwise; or  
  
 (b) the Borrower shall  
fail to pay any interest on any  
Loan or any fee or any other amount  
(other than an amount payable under  
clause (a) of this Article) payable  
under this Agreement or any other  
Loan Document, when and as the same  
shall become due and payable, and  
such failure shall continue  
unremedied for a period of ten  
(10) days; or  
  
  
  
 (c) any representation  
or warranty made or deemed made by  
or on behalf of the Borrower or any  
Subsidiary in or in connection with  
this Agreement or any other Loan  
Document (including the Schedules  
attached thereto) and any amendments  
or modifications hereof or waivers  
hereunder, or in any certificate,  
report, financial statement or other  
document submitted to the Lender by  
any Loan Party or any representative  
of any Loan Party pursuant to  
or in connection with this Agreement  
or any other Loan Document shall  
prove to be false or misleading when  
made or deemed made or submitted; or  
  
 (d) the Borrower shall  
fail to observe or perform any covenant  
or agreement contained in Sections 5.1  
or 5.10 or Articles 6 or 7 (other than  
in Section 7.14) and such failure  
shall continue unremedied for a period  
of thirty (30) days; or  
  
 (e) any Loan Party shall  
fail to observe or perform any  
covenant or agreement  
contained in Section 5.9; or  
  
 (f) any Loan Party shall  
fail to observe or perform any  
covenant or agreement contained in  
this Agreement or any other Loan  
Document (other than those referred  
to in clauses (a), (b), (d) and (e)  
above), and such failure shall remain  
unremedied for 30 days after the  
earlier of (i) any officer of the  
Borrower becomes aware of such  
failure, or (ii) written notice thereof  
shall have been given to the Borrower  
by the Lender; or  
  
 (g) the Borrower, any  
Subsidiary Loan Party or any other  
Subsidiary subject to any Indebtedness  
exceeding $100,000.00 in the aggregate  
other than non-recourse Indebtedness  
(a "Recourse Subsidiary") (whether as  
primary obligor or as guarantor or  
other surety) shall fail to pay any  
principal of or premium or interest on  
any Material Indebtedness that is  
outstanding, when and as the same  
shall become due and payable (whether  
at scheduled maturity, required  
prepayment, acceleration, demand or  
otherwise), and such failure shall  
continue after the applicable grace  
period, if any, specified in the  
agreement or instrument evidencing  
such Indebtedness; or any other event  
shall occur or condition shall exist  
under any agreement or instrument  
relating to such Indebtedness and  
shall continue after the applicable  
grace period, if any, specified in  
such agreement or instrument, if the  
effect of such event or  
condition is to accelerate, or permit  
the acceleration of, the maturity of  
such Indebtedness; or any  
such Indebtedness shall be declared to  
be due and payable; or required to be  
prepaid or redeemed (other than by  
a regularly scheduled required  
prepayment or redemption), purchased  
or defeased, or any offer to prepay,  
redeem, purchase or defease such  
Indebtedness shall be required to be  
made, in each case prior to the  
stated maturity thereof; or  
  
 (h) the Borrower, any  
Subsidiary Loan Party or any Recourse  
Subsidiary shall (i) commence a  
voluntary case or other proceeding  
or file any petition seeking liquidation,  
reorganization or other relief under any  
federal, state or foreign bankruptcy,  
insolvency or other similar law now or  
hereafter in effect or seeking the  
appointment of a custodian, trustee,  
receiver, liquidator or other similar  
official of it or any substantial part  
of its property, (ii) consent to the  
institution of, or fail to contest in  
a timely and appropriate manner, any  
proceeding or petition described in  
clause (i) of this Section, (iii)  
apply for or consent to the appointment  
of a custodian, trustee, receiver,  
liquidator or other similar official  
for the Borrower, any such Subsidiary Loan  
Party or any Recourse Subsidiary or  
for a substantial part of its assets,  
(iv) file an answer admitting the  
material allegations of a petition  
filed against it in any such  
proceeding, (v) make a  
  
  
  
general assignment for the benefit of  
creditors, or (vi) take any action  
for the purpose of effecting any of  
the foregoing; or  
  
 (i) an involuntary  
proceeding shall be commenced or an  
involuntary petition shall be filed  
seeking (i) liquidation,  
reorganization or other relief in  
respect of the Borrower, any  
Subsidiary Loan Party or any  
Recourse Subsidiary or its debts,  
or any substantial part of its  
assets, under any federal, state or  
foreign bankruptcy, insolvency or  
other similar law now or hereafter  
in effect or (ii) the appointment  
of a custodian, trustee, receiver,  
liquidator or other similar official  
for the Borrower, any Subsidiary  
Loan Party or any Recourse Subsidiary  
or for a substantial part of its  
assets, and in any such case, such  
proceeding or petition shall remain  
undismissed for a period of 60 days  
or an order or decree approving or  
ordering any of the foregoing shall  
be entered; or  
  
 (j) the Borrower, any  
Subsidiary Loan Party or any Recourse  
Subsidiary shall become unable to pay,  
shall admit in writing its inability  
to pay, or shall fail to pay, its debts  
as they become due; or  
  
 (k) an ERISA Event shall  
have occurred that, in the opinion of  
the Lender, when taken together with  
other ERISA Events that have occurred,  
could reasonably be expected  
to result in a Material Adverse Effect;  
or  
  
 (l) any judgment or order  
for the payment of money in excess of  
$3,500,000.00 (after application of net  
insurance proceeds, if any) in the  
aggregate or that could  
reasonably be expected to have a Material  
Adverse Effect shall be rendered against the  
Borrower, any Subsidiary Loan Party or any  
Recourse Subsidiary, and either (i)  
enforcement proceedings shall have been  
commenced by any creditor upon such  
judgment or order or (ii) there  
shall be a period of 60 consecutive days  
during which a stay of enforcement of  
such judgment or order, by reason of a  
pending appeal or otherwise, shall not  
be in effect; or  
  
 (m) any non-monetary  
judgment or order shall be rendered a  
gainst the Borrower, any Subsidiary  
Loan Party or any Recourse Subsidiary  
that could reasonably be expected to  
have a Material Adverse Effect, and  
there shall be a period of 60 consecutive  
days during which a stay of enforcement  
of such judgment or order, by reason of  
a pending appeal or otherwise, shall  
not be in effect; or  
  
 (n) a Change in Control  
shall occur or exist; or  
  
 (o) any provision of any  
Subsidiary Guarantee Agreement shall for  
any reason cease to be valid and binding  
on, or enforceable against, any Subsidiary  
Loan Party, or any Subsidiary Loan Party  
shall so state in writing, or any  
Subsidiary Loan Party shall seek to  
terminate its Subsidiary Guarantee  
Agreement;  
  
then, and in every such event (other  
than an event with respect to the  
Borrower described in clause (h) or (i)  
of this Section) and at any time  
thereafter during the continuance of  
such event, the Lender may, by notice  
to the Borrower, take any or all of the  
following actions, at the same or  
different times: (i) terminate the  
Revolving Commitment; (ii) terminate  
the Term Commitment; (iii) declare the  
principal of and any accrued interest  
on the Loans, and all other Obligations  
owing hereunder, to be, whereupon the  
same shall become due and payable  
  
  
  
immediately, without presentment, demand,  
protest or other notice of any kind,  
all of which are hereby waived by the  
Borrower; (iv) exercise all remedies  
contained in any other Loan Document;  
and (v) demand payment of an amount  
equal to 100% of the aggregate  
Available Amount under all outstanding  
Letters of Credit, to be held by the  
Lender as collateral for the Borrower's  
reimbursement obligations; and that, if  
an Event of Default specified in either  
clause (h) or (i) shall occur, the  
Commitments shall automatically terminate  
and the principal of the Loans then  
outstanding, together with accrued interest  
thereon, an amount equal to the aggregate  
Available Amount under all outstanding  
Letters of Credit, and all fees, and all  
other Obligations shall automatically  
become due and payable, without presentment,  
demand, protest or other notice of any kind,  
all of which are hereby waived by the  
Borrower.  
  
 ARTICLE 9  
  
 RESERVED  
  
 ARTICLE 10  
  
 MISCELLANEOUS  
  
 Section 10.1 Notices.  
  
 (a) Except in the case of  
notices and other communications expressly  
permitted to be given by telephone, all  
notices and other communications to any  
party herein to be effective shall be in  
writing and shall be delivered by hand or  
overnight courier service, mailed  
by certified or registered mail or sent by  
telecopy, as follows:  
  
To the Borrower: Patriot Transportation  
 Holding, Inc.  
 000 X. Xxxxxxx Xxxxxx  
 0xx Xxxxx  
 Xxxxxxxxxxxx, Xxxxxxx  
 00000  
 Attention: Xxxx X.  
 Xxxxxx, Xx.,  
 Telecopy Number:  
 (904) \_\_\_-\_\_\_\_  
  
To the Lender: Xxxxx Fargo Bank, N.A.  
 One Xxxxxxxxxxx Xxxxx  
 00xx Xxxxx  
 Xxxxxxxxxxxx, Xxxxxxx  
 00000  
 Attention: Xxxxx X. Xxxxx  
 Telephone No:  
 (000) 000-0000  
 Telecopy No: (000) 000-0000  
  
  
  
With a copy to: Xxxxxxx X. Xxxxxxx, Esq.  
 Xxxxx & Lardner LLP  
 Xxx Xxxxxxxxxxx Xxxxx  
 Xxxxx 0000  
 Xxxxxxxxxxxx, Xxxxxxx  
 00000-0000  
 Telecopy Number:  
 (000) 000-0000  
  
Any party hereto may change its address  
or telecopy number for notices and other  
communications hereunder by notice to the  
other parties hereto. All such notices  
and other communications shall, when  
transmitted by overnight delivery, or  
faxed, be effective when delivered for  
overnight (next-day) delivery, or  
transmitted in legible form by  
facsimile machine, respectively, or if  
mailed, upon the third Business Day  
after the date deposited into the mails or  
if delivered, upon delivery; provided,  
that notices delivered to the Lender  
shall not be effective until actually  
received by such Person at its address  
specified in this Section 10.1.  
  
 (b) Any agreement of the  
Lender herein to receive certain notices by  
telephone or facsimile is solely for the  
convenience and at the request of the  
Borrower. The Lender shall be entitled to  
rely on the authority of any Person  
purporting to be a Person authorized by  
the Borrower to give such notice and the  
Lender shall not have any liability to the  
Borrower or other Person on account of  
any action taken or not taken by the  
Lender in reliance upon such telephonic  
or facsimile notice. The obligation of  
the Borrower to repay the Loans and  
all other Obligations hereunder shall  
not be affected in any way or to any  
extent by any failure of the Lender to  
receive written confirmation of any  
telephonic or facsimile notice or the  
receipt by the Lender of a confirmation  
which is at variance with the terms  
understood by the Lender to be  
contained in any such telephonic or  
facsimile notice.  
  
 Section 10.2 Waiver;  
Amendments.  
  
 (a) No failure or delay  
by the Lender in exercising any right  
or power hereunder or any other Loan  
Document, and no course of dealing  
between the Borrower and the  
Lender, shall operate as a waiver  
thereof, nor shall any single or  
partial exercise of any such right  
or power or any abandonment or  
discontinuance of steps to enforce  
such right or power, preclude  
any other or further exercise thereof  
or the exercise of any other right or  
power hereunder or thereunder. The  
rights and remedies of the Lender  
hereunder and under the other Loan  
Documents are cumulative and are not  
exclusive of any rights or remedies  
provided by law. No waiver of any  
provision of this Agreement or any  
other Loan Document or consent to any  
departure by the Borrower therefrom  
shall in any event be effective  
unless the same shall be  
permitted by paragraph (b) of this  
Section, and then such waiver or  
consent shall be effective  
only in the specific instance and  
for the purpose for which given.  
Without limiting the generality  
of the foregoing, the making of a  
Loan shall not be construed as a  
waiver of any Default or  
Event of Default, regardless of  
whether the Lender may have had  
notice or knowledge of such  
Default or Event of Default at the  
time.  
  
 (b) No amendment or  
waiver of any provision of this  
Agreement or the other Loan  
Documents, nor consent to any  
departure by the Borrower  
therefrom, shall in any event be  
effective unless the same shall  
be in writing and signed by the  
Borrower and the Lender and then  
  
  
  
  
such waiver or consent shall be  
effective only in the specific  
instance and for the specific purpose  
for which given.  
  
 Section 10.3 Expenses;  
Indemnification.  
  
 (a) The Borrower shall  
pay (i) subject to the limitations  
set forth in the Commitment Letter,  
all reasonable, out-of-pocket costs  
and expenses of the Lender and its  
Affiliates, including the reasonable  
fees, charges and disbursements of  
counsel for the Lender and its  
Affiliates, in connection with the  
syndication of the credit facilities  
provided for herein, the preparation  
and administration of the Loan  
Documents and any amendments,  
modifications or waivers thereof  
(whether or not the transactions  
contemplated in this Agreement or  
any other Loan Document shall be  
consummated) and (ii) all reasonable  
out-of-pocket costs and expenses  
(including, without limitation, the  
reasonable fees, charges and  
disbursements of outside counsel  
and the allocated cost of inside  
counsel) incurred by the Lender in  
connection with the enforcement or  
protection of its rights in  
connection with this Agreement,  
including its rights under this  
Section, or in connection with the  
Loans made, including all such  
out-of-pocket expenses incurred  
during any workout, restructuring  
or negotiations in respect of such  
Loans.  
  
 (b) The Borrower shall  
indemnify the Lender, and each  
Related Party of the Lender (each,  
an "Indemnitee") against, and hold  
each of them harmless from, any and  
all costs, losses, liabilities,  
claims, damages and related expenses,  
including the reasonable fees, charges  
and disbursements of any counsel for  
any Indemnitee, which may be incurred  
by or asserted against any Indemnitee  
arising out of, in connection with or  
as a result of (i) the execution or  
delivery of this Agreement or any  
other agreement or instrument  
contemplated hereby, the performance  
by the parties hereto of their  
respective obligations hereunder or  
the consummation of any of the  
transactions contemplated hereby,  
(ii) any Loan or any actual or  
proposed use of the proceeds  
therefrom, (iii) any actual or  
alleged presence or release of  
Hazardous Materials on or  
from any property owned by the  
Borrower or any Subsidiary or any  
Environmental Liability  
related in any way to the Borrower  
or any Subsidiary 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 and regardless of whether any  
Indemnitee is a party thereto; provided,  
that the Borrower shall not be  
obligated to indemnify any Indemnitee  
for any of the foregoing  
arising out of such Indemnitee's gross  
negligence or willful misconduct as  
determined by a court  
of competent jurisdiction in a final  
and nonappealable judgment.  
  
 (c) The Borrower shall pay,  
and hold the Lender harmless from and  
against, any and all present and  
future stamp, documentary, and other  
similar taxes with respect to this  
Agreement and any other Loan Documents,  
any collateral described therein, or  
any payments due thereunder, and save  
the Lender harmless from and against  
any and all liabilities with respect  
to or resulting from any delay or  
omission to pay such taxes.  
  
 (d) To the extent permitted  
by applicable law, the Borrower shall  
not assert, and hereby waives, any claim  
against any Indemnitee, on any theory of  
liability, for special, indirect,  
consequential or punitive damages (as  
opposed to actual or direct damages)  
arising out of, in connection with or  
as a result of, this Agreement or any  
agreement or instrument contemplated  
hereby, the transactions contemplated  
therein, any Loan or the use of proceeds  
thereof.  
  
  
  
 (e) All amounts due under  
this Section shall be payable promptly  
after written demand therefor.  
  
 Section 10.4 Successors and  
Assigns.  
  
 (a) The provisions of this  
Agreement shall be binding upon and inure  
to the benefit of the parties hereto and  
their respective successors and assigns,  
except that the Borrower may not assign  
or transfer any of its rights hereunder  
without the prior written consent of Lender  
(and any attempted assignment or transfer  
by the Borrower without such consent shall  
be null and void).  
  
 (b) The Lender may at any time,  
without the consent of the Borrower, sell  
participations to one or more banks or  
other entities (a "Participant") in all  
or a portion of the Lender's rights and  
obligations under this Agreement  
(including all or a portion of the Revolving  
Commitment, the Term Commitment and the  
Loans owing to it); provided, that (i) the  
Lender's obligations under this Agreement  
shall remain unchanged, (ii) the Lender  
shall remain solely responsible to the  
other parties hereto for the performance  
of its obligations hereunder, and (iii)  
the Borrower shall continue to deal solely  
and directly with the Lender in connection  
with the Lender's rights and obligations  
under this Agreement and the other Loan  
Documents. Any agreement between the  
Lender and the Participant with respect  
to such participation shall  
provide that the Lender shall retain the  
sole right and responsibility to enforce  
this Agreement and the other Loan Documents  
and the right to approve any amendment,  
modification or waiver of this Agreement  
and the other Loan Documents; provided,  
that such participation agreement  
may provide that the Lender will not,  
without the consent of the Participant,  
agree to any amendment, modification or  
waiver of this Agreement that would (i)  
increase the Revolving Commitment or Term  
Commitment of the Participant without the  
written consent of such Participant, (ii)  
reduce the principal amount of any Loan  
or reduce the rate of interest thereon, or  
reduce any fees payable hereunder, without  
the written consent of each Participant  
affected thereby, (iii) postpone the date  
fixed for any payment of any principal of,  
or interest on, any Loan or interest thereon  
or any fees hereunder or reduce the amount  
of, waive or excuse any such payment, or  
postpone the scheduled date for the  
termination or reduction of any Commitment,  
without the written consent of each  
Participant affected thereby, (iv)  
release any guarantor or  
limit the liability of any such guarantor  
under any guaranty agreement without the  
written consent of such Participant; or  
(v) release all or substantially all  
collateral (if any) securing any of  
the Obligations without the written  
consent of such Participant. The Borrower  
agrees that each Participant shall be  
entitled to the benefits of Sections  
2.16, 2.17, and 2.18 to the same extent as  
if it were a Lender hereunder and had  
acquired its interest by assignment  
pursuant to paragraph (b); provided, that  
no Participant shall be entitled to  
receive any greater payment under Section  
2.16 or 2.18 than the Lender would have  
been entitled to receive with respect to  
the participation sold to such Participant  
unless the sale of such participation is  
made with the Borrower's prior  
written consent. To the extent  
permitted by law, the Borrower agrees  
that each Participant shall  
be entitled to the benefits of Section  
2.20 as though it were the Lender,  
provided, that such Participant agrees  
to share with the Lender the proceeds  
thereof in accordance with Section 2.20  
as fully as if it were the Lender  
hereunder.  
  
 (c) The Lender may at any  
time pledge or assign a security  
interest in all or any portion of its  
rights under this Agreement, the  
Revolving Credit Note and any Term Notes  
to  
  
  
  
secure its obligations to a Federal  
Reserve Bank without complying with  
this Section; provided, that no such  
pledge or assignment shall release the  
Lender from any of its obligations  
hereunder or substitute any such  
pledgee or assignee for the Lender  
as a party hereto.  
  
 Section 10.5 Governing Law;  
Jurisdiction; Consent to Service of  
Process.  
  
 (a) This Agreement and the  
other Loan Documents shall be construed  
in accordance with and be governed by  
the law (without giving effect to the  
conflict of law principles thereof) of  
the State of Florida.  
  
 (b) The Borrower hereby  
irrevocably and unconditionally  
submits, for itself and its property,  
to the non-exclusive jurisdiction of  
the Circuit Court of Xxxxx County,  
Florida, the United States District  
Court of the Middle District of Florida,  
and of any state court of the  
State of Florida 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 the transactions contemplated  
hereby or thereby, or for recognition  
or enforcement of any judgment, and  
each of the parties hereto hereby  
irrevocably and unconditionally  
agrees that all claims in respect  
of any such action  
or proceeding may be heard and  
determined in such Florida state  
court or, to the extent permitted by  
applicable law, 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 any other Loan  
Document shall affect any right  
that the Lender may otherwise  
have to bring any action or  
proceeding relating to this  
Agreement or any other Loan  
Document against the Borrower or  
its properties in the courts of  
any jurisdiction.  
  
 (c) The Borrower  
irrevocably and unconditionally  
waives any objection which  
it may now or hereafter have to  
the laying of venue of any such  
suit, action or proceeding  
described in paragraph (b) of this  
Section and brought in any court  
referred to in paragraph (b) of  
this Section. Each of the parties  
hereto 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.  
  
 Section 10.6 ARBITRATION  
Arbitration. The parties hereto agree,  
upon demand by any party, to submit to  
binding arbitration all claims, disputes  
and controversies between or among them  
(and their respective employees,  
officers, directors, attorneys, and  
other agents), whether in tort, contract  
or otherwise in any way arising out  
of or relating to (i) any credit subject  
hereto, or any of the Loan Documents,  
and their negotiation, execution,  
collateralization, administration,  
repayment, modification, extension,  
substitution, formation,  
inducement, enforcement, default or  
termination; or (ii) requests for  
additional credit.  
  
 (b) Governing Rules. Any  
arbitration proceeding will (i) proceed  
in a location in Florida selected by the  
American Arbitration Association ("AAA");  
(ii) be governed by the Federal  
Arbitration Act (Title 9 of the  
United States Code), notwithstanding  
any conflicting choice of law provision  
in any of the documents between the  
parties; and (iii) be conducted by  
the AAA, or such other administrator  
as the parties shall mutually agree  
upon, in accordance with the AAA's  
commercial dispute resolution procedures,  
unless the claim or counterclaim is at  
least $1,000,000.00 exclusive of claimed  
interest, arbitration fees and costs in  
which case the  
  
  
  
  
arbitration shall be conducted in  
accordance with the AAA's optional  
procedures for large, complex commercial  
disputes (the commercial dispute  
resolution procedures or the optional  
procedures for large, complex commercial  
disputes to be referred to herein, as  
applicable, as the "Rules"). If there is  
any inconsistency between the terms  
hereof and the Rules, the terms and  
procedures set forth herein shall control.  
Any party who fails or refuses to submit  
to arbitration following a demand by any  
other party shall bear all costs and  
expenses incurred by such other  
party in compelling arbitration of any  
dispute. Nothing contained herein shall  
be deemed to be a waiver by any party  
that is a bank of the protections  
afforded to it under 12 U.S.C. Section 91  
or any similar applicable state law.  
  
 (c) No Waiver of Provisional  
Remedies, Self-Help and Foreclosure. The  
arbitration requirement does not limit  
the right of any party to (i) foreclose  
against real or personal property  
collateral; (ii) exercise self-help  
remedies relating to collateral or  
proceeds of collateral such as setoff  
or repossession; or (iii) obtain  
provisional or ancillary remedies such as  
replevin, injunctive relief, attachment  
or the appointment of a receiver, before  
during or after the pendency of any  
arbitration proceeding. This exclusion  
does not constitute a waiver of the right  
or obligation of any party to submit any  
dispute to arbitration or reference  
hereunder, including those arising  
from the exercise of the actions  
detailed in sections (i), (ii) and (iii)  
of this paragraph.  
  
 (d) Arbitrator  
Qualifications and Powers. Any  
arbitration proceeding in  
which the amount in controversy is  
$5,000,000.00 or less will be decided  
by a single arbitrator  
selected according to the Rules, and  
who shall not render an award of greater  
than $5,000,000.00. Any dispute in  
which the amount in controversy exceeds  
$5,000,000.00 shall be decided by  
majority vote of a panel of three  
arbitrators; provided however, that  
all three arbitrators must actively  
participate in all hearings and  
deliberations. The arbitrator will be a  
neutral attorney licensed in the State  
of Florida or a neutral retired judge  
of the state or federal judiciary of  
Florida, in either case with a minimum  
of ten years experience in the substantive  
law applicable to the subject matter of  
the dispute to be arbitrated. The  
arbitrator will determine whether or not  
an issue is arbitratable and will give  
effect to the statutes of limitation in  
determining any claim. In any  
arbitration proceeding the arbitrator  
will decide (by documents  
only or with a hearing at the  
arbitrator's discretion) any pre-hearing  
motions which are similar to  
motions to dismiss for failure to state  
a claim or motions for summary  
adjudication. The arbitrator shall  
resolve all disputes in accordance  
with the substantive law of Florida and  
may grant any remedy or relief that a  
court of such state could order or  
grant within the scope hereof  
and such ancillary relief as is  
necessary to make effective any award.  
The arbitrator shall also have the  
power to award recovery of all costs  
and fees, to impose sanctions and to  
take such other action as the  
arbitrator deems necessary to the  
same extent a judge could pursuant  
to the Federal Rules of Civil  
Procedure, the Florida Rules of  
Civil Procedure or other applicable  
law. Judgment upon the award rendered  
by the arbitrator may be entered in  
any court having jurisdiction. The  
institution and maintenance of an  
action for judicial relief or pursuit  
of a provisional or ancillary remedy  
shall not constitute a waiver of the  
right of any party, including  
the plaintiff, to submit the  
controversy or claim to arbitration  
if any other party contests such  
action for judicial relief.  
  
 (e) Discovery. In any  
arbitration proceeding, discovery  
will be permitted in accordance  
with the Rules. All discovery shall  
be expressly limited to matters directly  
relevant  
  
  
  
to the dispute being arbitrated and  
must be completed no later than 20  
days before the hearing date.  
Any requests for an extension of the  
discovery periods, or any discovery  
disputes, will be subject  
to final determination by the  
arbitrator upon a showing that the  
request for discovery is essential  
for the party's presentation and that  
no alternative means for obtaining  
information is available.  
  
 (f) Class Proceedings and  
Consolidations. No party hereto shall  
be entitled to join or consolidate  
disputes by or against others in any  
arbitration, except parties who have  
executed any Loan Document, or to  
include in any arbitration any dispute  
as a representative or member of a  
class, or to act in any arbitration  
in the interest of the general public  
or in a private attorney general  
capacity.  
  
 (g) Payment Of Arbitration  
Costs And Fees. The arbitrator shall  
award all costs and expenses of the  
arbitration proceeding.  
  
 (h) Miscellaneous. To the  
maximum extent practicable, the AAA,  
the arbitrators and the parties shall  
take all action required to conclude  
any arbitration proceeding within 180  
days of the filing of the dispute with  
the AAA. No arbitrator or other party  
to an arbitration proceeding may  
disclose the existence, content or  
results thereof, except for  
disclosures of information by a party  
required in the ordinary course of its  
business or by applicable law or  
regulation. If more than one  
agreement for arbitration by or  
between the parties potentially  
applies to a dispute, the  
arbitration provision most directly  
related to the Loan Documents or  
the subject matter of the dispute  
shall control. This arbitration  
provision shall survive termination,  
amendment or expiration of any of  
the Loan Documents or any  
relationship between the parties.  
  
 Section 10.7 Right of  
Setoff. In addition to any rights  
now or hereafter granted under  
applicable law and not by way of  
limitation of any such rights,  
the Lender shall have the right,  
at any time or from time to time  
upon the occurrence and during the  
continuance of an Event of Default,  
without prior notice to the Borrower,  
any such notice being expressly waived  
by the Borrower to the extent permitted  
by applicable law, to set off and apply  
against all deposits (general or  
special, time or demand, provisional  
or final) of the Borrower at any time  
held or other obligations at any time  
owing by the Lender to or for the  
credit or the account of the Borrower  
against any and all Obligations held  
by the Lender, irrespective of whether the  
Lender shall have made demand hereunder  
and although such Obligations may be  
unmatured. the Lender agrees promptly  
to notify the Borrower after any such  
set off and any application made by the  
Lender; provided, that the failure to  
give such notice shall not affect the  
validity of such set-off and application.  
  
 Section 10.8 Counterparts;  
Integration. This Agreement may be executed  
by one or more of the parties to this  
Agreement on any number of separate  
counterparts (including by telecopy),  
and all of said counterparts taken  
together shall be deemed to constitute  
one and the same instrument. This  
Agreement, the other Loan Documents,  
and any separate letter agreement(s)  
relating to any fees payable to the  
Lender constitute the entire agreement  
among the parties hereto and thereto  
regarding the subject matters hereof  
and thereof and supersede all prior  
agreements and understandings, oral or  
written, regarding such subject matters.  
  
  
  
  
 Section 10.9 Survival. All  
covenants, agreements, representations  
and warranties made by the Borrower  
herein and in the certificates or other  
instruments delivered in connection with  
or pursuant to this Agreement shall be  
considered to have been relied upon by  
the other parties hereto and shall survive  
the execution and delivery of this Agreement  
and the making of any Loans, regardless of  
any investigation made by any such other  
party or on its behalf and notwithstanding  
that the Lender may have had notice or  
knowledge of any Default or incorrect  
representation or warranty at the time any  
credit is extended hereunder, and shall  
continue in full force and effect as long  
as the principal of or any accrued interest  
on any Loan or any fee or any other amount  
payable under this Agreement is outstanding  
and unpaid and so long as the Commitments  
have not expired or terminated. The  
provisions of Sections 2.17, 2.18, 2.19  
and 10.3 shall survive and remain in full  
force and effect regardless of the  
consummation of the transactions  
contemplated hereby, the repayment of  
the Loans, the expiration or termination of  
the Revolving Commitment or the Term  
Commitment or the termination of this  
Agreement or any provision hereof.  
All representations and warranties made  
herein, in the certificates, reports,  
notices, and other documents delivered  
pursuant to this Agreement shall survive  
the execution and delivery of this  
Agreement and the other Loan Documents,  
and the making of the Loans.  
  
 Section 10.10 Severability.  
Any provision of this Agreement or any  
other Loan Document held to be illegal,  
invalid or unenforceable in any  
jurisdiction, shall, as to such  
jurisdiction, be ineffective to the extent  
of such illegality, invalidity or  
unenforceability without affecting the  
legality, validity or enforceability of  
the remaining provisions hereof or thereof;  
and the illegality, invalidity or  
unenforceability of a particular provision  
in a particular jurisdiction shall not  
invalidate or render unenforceable such  
provision in any other jurisdiction.  
  
 Section 10.11 Confidentiality.  
The Lender agrees to take normal and  
reasonable precautions to maintain the  
confidentiality of any information  
designated in writing as confidential  
and provided to it by the Borrower or  
any Subsidiary, except that such information  
may be disclosed (i) to any Related Party of  
the Lender, including without limitation  
accountants, legal counsel and other  
advisors, (ii) to the extent required by  
applicable laws or regulations or by any  
subpoena or similar legal process, (iii)  
to the extent requested by any  
regulatory agency or authority, (iv) to  
the extent that such information becomes  
publicly available other than as a result  
of a breach of this Section, or which  
becomes available to the Lender or any  
Related Party of any of the foregoing on  
a nonconfidential basis from a source  
other than the Borrower, (v) in connection  
with the exercise of any remedy hereunder  
or any suit, action or proceeding relating  
to this Agreement or the enforcement of  
rights hereunder, and subject to  
provisions substantially similar to this  
Section 10.11, to any actual or prospective  
assignee or Participant, or (vi) with the  
consent of the Borrower. Any Person  
required to maintain the confidentiality  
of any information as provided for 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 its own confidential information.  
  
 Section 10.12 Interest Rate  
Limitation. Notwithstanding anything  
herein to the contrary, if at any time  
the interest rate applicable to any Loan,  
together with all fees, charges  
and other amounts which may be treated  
as interest on such Loan under applicable  
law (collectively, the "Charges"), shall  
exceed the maximum lawful rate of interest  
(the "Maximum Rate") which may be contracted  
for, charged, taken, received or reserved  
by the Lender in  
  
  
  
  
accordance with applicable law, the rate  
of interest payable in respect of such  
Loan hereunder, together with all Charges  
payable in respect thereof, shall be  
limited to the Maximum Rate and, to the  
extent lawful, the interest and Charges  
that would have been payable in respect  
of such Loan but were not payable as a  
result of the operation of this Section  
shall be cumulated and the interest and  
Charges payable to the Lender in respect  
of other Loans or periods shall be increased  
(but not above the Maximum Rate therefor)  
until such cumulated amount, together with  
interest thereon at the Federal Funds Rate  
to the date of repayment, shall have been  
received by the Lender.  
  
 Section 10.13 US PATRIOT  
Act Notice. Notwithstanding anything  
herein to the contrary, Lender hereby  
notifies the Borrower that, pursuant to  
the requirements of Title III  
of the Uniting and Strengthening America  
by Providing Appropriate Tools Required  
to Intercept and Obstruct Terrorism (USA  
PATRIOT Act) Act of 2001 (Public Law 107-56,  
signed into law October 26, 2001) and  
regulations promulgated thereunder  
(collectively, the "Patriot Act"),  
Lender is required to obtain, verify and  
record information that identifies the Loan  
Parties, including without limitation the  
name, address and identification number of  
each Loan Party.  
  
[Remainder of Page Intentionally Left Blank]  
  
  
  
  
 IN WITNESS WHEREOF, the parties  
hereto have caused this Agreement to  
be duly executed, under seal in the case  
of the Borrower, by their respective  
authorized officers as of the  
day and year first above written.  
  
 PATRIOT TRANSPORTATION  
 HOLDING, INC.  
  
  
  
 By:  
 Print Name: Xxxx X. Xxxxxx, Xx.  
 Title: Vice President and  
 Chief Financial Officer  
  
  
  
  
 XXXXX FARGO BANK, N.A.  
  
  
  
 By:  
 Print Name: Xxxxxxx X. Xxxxxxxx  
 Title: Senior Vice President  
  
  
  
  
  
  
 ACKNOWLEDGMENT OF BORROWER  
  
STATE OF GEORGIA  
COUNTY OF CAMDEN  
  
 On this the 21st day of December,  
2012, personally appeared Xxxx X. Xxxxxx,  
as the Vice President and Chief Financial  
Officer of Patriot Transportation Holding,  
Inc., a Florida corporation (the "Borrower"),  
and before me, executed the foregoing 2012  
Amended and Restated Credit Agreement dated  
as of December 21, 2012 between the Borrower  
and Xxxxx Fargo Bank, N.A. on behalf of  
such corporation.  
  
 IN WITNESS WHEREOF, I have hereunto  
set my hand and official seal.  
  
 ------------------------------------  
 Signature of Notary Public, State of  
  
 ----------------------------------------  
 (Print, Type or Stamp Commissioned Name of  
 Notary Public)  
 \_\_\_\_ Personally known ; OR  
 \_\_\_\_ Produced identification  
 Type of identification produced:\_\_\_\_\_\_\_\_\_  
  
 (Notary Seal)  
  
  
  
  
 ACKNOWLEDGMENT OF XXXXX FARGO BANK, N.A.  
  
STATE OF GEORGIA  
COUNTY OF CAMDEN  
  
  
 On this the 21st day of December,  
2012, personally appeared Xxxxxxx X.  
Xxxxxxxx, as the Senior Vice President of  
Xxxxx Fargo Bank, N.A., a national banking  
association, and before me, executed the  
foregoing 2012 Amended and Restated Credit  
Agreement dated as of December 21, 2012,  
between the Borrower and Xxxxx Fargo Bank,  
N.A., on behalf of such national banking  
association.  
  
 IN WITNESS WHEREOF, I have hereunto  
set my hand and official seal.  
  
 -----------------------------  
 Signature of Notary Public,  
 State and County Aforesaid  
  
 ---------------------------------  
 (Print, Type or Stamp Commissioned  
 Name of Notary Public)  
 \_\_\_\_ Personally known ; OR  
 \_\_\_\_ Produced identification  
 Type of identification produced:\_\_\_\_\_  
  
 (Notary Seal)  
  
  
  
  
 SCHEDULE 4.5  
  
 ENVIRONMENTAL MATTERS  
  
  
Table intentionally omitted  
  
  
  
  
 SCHEDULE 4.14  
  
 Patriot Transportation Holding, Inc.  
 Subsidiaries  
 As of December 20, 2012  
  
  
  
  
 Table intentionally omitted  
  
  
  
 SCHEDULE 7.4  
  
 EXISTING INVESTMENTS  
  
 Table intentionally omitted  
  
  
  
  
 EXHIBIT A  
  
 RENEWAL REVOLVING CREDIT NOTE  
$40,000,000.00 St. Mary's, Georgia  
 December \_\_, 2012  
  
 FOR VALUE RECEIVED, the  
undersigned, PATRIOT TRANSPORTATION  
HOLDING, INC., a Florida corporation  
(the "Borrower"), hereby promises to  
pay to Xxxxx Fargo Bank, N.A. (the  
"Lender") or its registered assigns,  
at the office of Lender at One  
Independent Drive, 25th Floor,  
Xxxxxxxxxxxx, Xxxxxxx 00000, on the  
Commitment Termination Date (as  
defined in the 2012 Amended and  
Restated Credit Agreement of even  
date herewith (as the same may be  
amended, supplemented or otherwise  
modified from time to time, the  
"Credit Agreement")), between the  
Borrower and the Lender, the lesser  
of the principal sum of Forty Million  
and No/100 Dollars ($40,000,000.00)  
and the aggregate unpaid principal  
amount of all Revolving Loans made  
by the Lender to the Borrower pursuant  
to the Credit Agreement, in lawful  
money of the United States of America  
in immediately available funds, and to  
pay interest from the date hereof on the  
principal amount thereof from time to  
time outstanding, in like funds, at said  
office, at the rate or rates per annum  
and payable on such dates as provided in  
the Credit Agreement. In addition,  
should legal action or an attorney-at-  
law be utilized to collect any amount  
due hereunder, the Borrower further  
promises to pay all costs of collection,  
including the reasonable attorneys'  
fees of the Lender.  
  
 The Borrower promises to pay  
interest, on demand, on any overdue  
principal and, to the extent permitted by  
law, overdue interest from their due dates  
at a rate or rates provided in the  
Credit Agreement.  
  
 This Note is issued in connection  
with, and is entitled to the benefits of,  
the Credit Agreement which, among  
other things, contains provisions for  
the acceleration of the maturity  
hereof upon the happening of certain events,  
for prepayment of the principal hereof prior  
to the maturity hereof and for the  
amendment or waiver of certain provisions  
of the Credit Agreement, all upon the terms  
and conditions therein specified. THIS  
REVOLVING CREDIT NOTE SHALL BE CONSTRUED  
IN ACCORDANCE WITH AND GOVERNED BY THE LAWS  
OF THE STATE OF FLORIDA AND ANY APPLICABLE  
LAWS OF THE UNITED STATES OF AMERICA.  
  
 This Note renews, modifies and  
increases the Revolving Credit Note  
dated December 10, 2004, and shall  
continue to represent amounts currently  
outstanding under such earlier note.  
  
 PATRIOT TRANSPORTATION  
 HOLDING, INC.  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
 AFFIDAVIT OF OUT-OF-STATE DELIVERY  
  
STATE OF GEORGIA  
COUNTY OF CAMDEN  
  
 Before me this day personally  
appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
(the "Borrower's Agent"), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
[title or capacity] of Patriot Transportation  
Holding, Inc. (the "Borrower") and  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the \_\_\_\_\_\_\_\_\_\_\_\_\_  
of Xxxxx Fargo Bank, N.A. (the "Bank's Agent"),  
a duly authorized agent of Xxxxx Fargo Bank,  
N.A., who being by me first duly sworn,  
depose(s) and say(s):  
  
 1. That on the date hereof the  
Borrower's Agent executed the following  
documents on behalf of the Borrower  
(collectively, the "Documents") in the State  
of Georgia:  
  
 (a) That certain Renewal Revolving  
Credit Note in the stated principal amount of  
$40,000,000 dated December \_\_, 2012, made  
payable by Borrower to Xxxxx Fargo Bank, N.A.  
(the "Lender") and (b) that certain 2012  
Amended and Restated Credit Agreement dated  
December \_\_, 2012 between Borrower and  
Lender.  
  
 2. That the Borrower's Agent  
personally delivered the Documents to the  
Bank's Agent and the Bank's Agent as agent  
of the Lender, accepted the Documents on the  
date hereof in the State of Georgia.  
  
 FURTHER AFFIANTS SAYETH NOT.  
  
 BORROWER'S AGENT: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 [name of Borrower's Agent]  
  
 BANK'S AGENT: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 [name of Bank's Agent]  
  
  
Sworn to and subscribed before me this  
\_\_\_\_ day of December, 2012, at \_\_\_\_\_\_\_\_\_,  
Georgia.  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Notary Public, State and  
 County Aforesaid  
 My Commission No.:  
 My Commission Expires:  
  
  
  
  
 EXHIBIT B  
  
 FORM OF TERM NOTE  
  
$\_\_\_\_\_\_\_\_\_\_\_\_\_ Xx. Xxxx'x, Xxxxxxx  
 \_\_\_\_\_\_\_\_ \_\_, 20\_\_  
  
 FOR VALUE RECEIVED, the  
undersigned, PATRIOT TRANSPORTATION  
HOLDING, INC., a Florida corporation  
(the "Borrower"), hereby promises to pay  
to Xxxxx Fargo Bank, N.A. (the "Lender")  
or its registered assigns, at the office  
of Lender at One Independent Drive, 25th  
Floor, Xxxxxxxxxxxx, Xxxxxxx 00000, on  
the Commitment Termination Date (as defined  
in the 2012 Amended and Restated Credit  
Agreement of even date herewith (as the  
same may be amended, supplemented or  
otherwise modified from time to time, the  
"Credit Agreement")), between the Borrower  
and the Lender, the principal sum of  
\_\_\_\_\_\_\_\_\_\_\_\_\_ and No/100 Dollars  
($\_\_,\_\_\_,\_\_\_.00), in lawful money of  
the United States of America in  
immediately available funds, and to  
pay interest from the date hereof on  
the principal amount thereof from time  
to time outstanding, in like funds, at  
said office, at the rate or rates per  
annum and payable on such dates as  
provided in the Credit Agreement. In  
addition, should legal action or an  
attorney-at-law be utilized to collect  
any amount due hereunder, the Borrower  
further promises to pay all costs of  
collection, including the reasonable  
attorneys' fees of the Lender.  
  
 The Borrower promises to pay  
interest, on demand, on any overdue  
principal and, to the extent permitted  
by law, overdue interest from their  
due dates at a rate or rates provided  
in the Credit Agreement.  
  
 This Note is issued in connection  
with, and is entitled to the benefits of,  
the Credit Agreement which, among other  
things, contains provisions for the  
acceleration of the maturity hereof upon  
the happening of certain events, for  
prepayment of the principal hereof  
prior to the maturity hereof and for  
the amendment or waiver of certain  
provisions of the Credit Agreement,  
all upon the terms and conditions  
therein specified. THIS TERM NOTE  
SHALL BE CONSTRUED IN ACCORDANCE WITH  
AND GOVERNED BY THE LAWS OF THE  
STATE OF FLORIDA AND ANY APPLICABLE  
LAWS OF THE UNITED STATES OF AMERICA.  
  
 PATRIOT TRANSPORTATION  
 HOLDING, INC.  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
  
 [FORM OF]  
AFFIDAVIT OF OUT-OF-STATE DELIVERY  
  
STATE OF GEORGIA  
COUNTY OF CAMDEN  
  
 Before me this day personally  
appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
(the  
"Borrower's Agent"), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
[title or capacity] of Patriot  
Transportation Holding,  
Inc. (the "Borrower") and  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the  
\_\_\_\_\_\_\_\_\_\_\_\_\_ of Xxxxx Fargo  
Bank, N.A. (the "Bank's Agent"),  
a duly authorized agent of Xxxxx  
Fargo Bank, N.A., who being by me  
first duly sworn, depose(s) and say(s):  
  
 1. That on the date  
hereof the Borrower's Agent executed  
the following documents on behalf of  
the Borrower (collectively, the  
"Documents") in the State of Georgia:  
  
 (a) That certain Term Note  
in the stated principal amount of  
$\_\_,\_\_\_,\_\_\_ dated \_\_\_\_\_\_\_\_\_\_ \_\_, 20\_\_,  
made payable by Borrower to Xxxxx Fargo  
Bank, N.A. (the "Lender").  
  
 2. That the Borrower's  
Agent personally delivered the  
Documents to the Bank's Agent and the  
Bank's Agent as agent of the Lender,  
accepted the Documents on the date  
hereof in the State of Georgia.  
  
 FURTHER AFFIANTS SAYETH NOT.  
  
 BORROWER'S AGENT:\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_  
 [name of Borrower's Agent]  
  
 BANK'S AGENT:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 [name of Bank's Agent]  
  
  
Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_,  
at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Georgia.  
  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Notary Public, State and  
 County Aforesaid  
 My Commission No.:\_\_\_\_\_\_\_\_\_\_  
 My Commission Expires:\_\_\_\_\_\_  
  
  
  
  
 EXHIBIT C  
  
 [FORM OF]  
 SUBSIDIARY GUARANTEE AGREEMENT  
  
 SUBSIDIARY GUARANTEE AGREEMENT  
dated as of \_\_\_\_\_\_\_\_\_\_\_, 2012, among  
each of the Subsidiaries listed on  
Schedule I hereto (each such subsidiary  
individually, a "Guarantor" and  
collectively, the "Guarantors") of  
PATRIOT TRANSPORTATION HOLDING, INC.,  
a Florida corporation (the "Borrower"),  
and XXXXX FARGO BANK, NATIONAL  
ASSOCIATION, a national banking  
association (the "Lender") as  
administrative agent (the "Administrative  
Agent") for the Lenders (as defined in  
the Credit Agreement referred to below).  
  
 Reference is made to the 2012  
Amended and Restated Credit Agreement  
of even date herewith (as amended,  
supplemented or otherwise modified  
from time to time, the "Credit Agreement"),  
between the Borrower and the Lender.  
Capitalized terms used herein and not  
defined herein shall have the meanings  
assigned to such terms in the Credit  
Agreement.  
  
 The Lender has agreed to make  
Loans to the Borrower, pursuant to,  
and upon the terms and subject to the  
conditions specified in, the Credit  
Agreement. Each of the Guarantors is a  
direct or indirect wholly-owned  
Subsidiary of the Borrower, and part of  
a common economic enterprise, and  
acknowledges that it will derive  
substantial benefit from the making  
of the Loans by the Lenders because  
advances thereunder will be used for  
working capital, capital expenditure  
and other general corporate purposes  
of the Guarantors and will benefit the  
consolidated group. The obligation of  
the Lender to make Loans is conditioned  
on, among other things, the execution  
and delivery by the Guarantors of a  
Subsidiary Guarantee Agreement in the  
form hereof. As consideration therefor  
and in order to induce the Lender to  
make Loans, the Guarantors are willing  
to execute this Subsidiary Guarantee  
Agreement.  
  
 Accordingly, the parties hereto  
agree as follows:  
  
 Section 1. Guarantee. Each  
Guarantor unconditionally guarantees,  
jointly with the other Guarantors and  
severally, (a) the due and punctual  
payment of (i) the principal of and  
premium, if any, and interest (including  
interest accruing during the pendency of  
any bankruptcy, insolvency, receivership  
or other similar proceeding, regardless  
of whether allowed or allowable in such  
proceeding) on the Loans, when and as  
due, whether at maturity, by acceleration,  
upon one or more dates set for prepayment  
or otherwise and (ii) all other monetary  
obligations, including fees, costs,  
expenses and indemnities, whether primary,  
secondary, direct, contingent, fixed or  
otherwise (including monetary obligations  
incurred during the pendency of any  
bankruptcy, insolvency, receivership or  
other similar proceeding, regardless of  
whether allowed or allowable in such  
proceeding), of the Loan Parties to  
the Lender under the Credit Agreement  
and the other Loan Documents, (b) the  
due and punctual performance of all  
covenants, agreements, obligations and  
liabilities of the Loan Parties under  
or pursuant to the Credit Agreement and  
the other Loan Documents; and (c) the  
due and punctual payment and  
performance of all obligations of the  
Borrower, monetary or otherwise, under  
each Hedging  
  
  
  
Agreement entered into with a counterparty  
that was the Lender or an Affiliate of a  
Lender at the time such Hedging Agreement  
was entered into (all the monetary and  
other obligations referred to in the  
preceding clauses (a) through (c) being  
collectively called the "Obligations").  
Each Guarantor further agrees that the  
Obligations may be extended or renewed,  
in whole or in part, without notice to  
or further assent from it, and that it  
will remain bound upon its guarantee  
notwithstanding any extension or renewal  
of any Obligation.  
  
 Section 2. Obligations  
Not Waived. To the fullest extent  
permitted by applicable law, each  
Guarantor waives presentment to, demand  
of payment from and protest to the  
Borrower of any of the Obligations, and  
also waives notice of acceptance of its  
guarantee and notice of protest for  
nonpayment. To the fullest extent  
permitted by applicable law, the  
obligations of each Guarantor hereunder  
shall not be affected by (a) the failure  
of the Lender to assert any claim or  
demand or to enforce or exercise any  
right or remedy against the Borrower or  
any other Guarantor under the provisions  
of the Credit Agreement, any other Loan  
Document or otherwise, (b) any rescission,  
waiver, amendment or modification of, or  
any release from any of the terms or  
provisions of, this Agreement, any other  
Loan Document, any Guarantee or any  
other agreement, including with respect  
to any other Guarantor under this  
Agreement, or (c) the failure to perfect  
any security interest in, or the  
release of, any of the security held  
by or on behalf of the Lender.  
  
 Section 3. Guarantee of  
Payment. Each Guarantor further agrees  
that its guarantee constitutes a  
guarantee of payment when due and  
not of collection, and waives any  
right to require that any resort be  
had by the Lender to any of the  
security held for payment of the  
Obligations or to any balance of  
any deposit account or credit on  
the books of the Lender in  
favor of the Borrower or any other  
person.  
  
 Section 4. No Discharge  
or Diminishment of Guarantee. The  
obligations of each Guarantor hereunder  
shall not be subject to any reduction,  
limitation, impairment or termination  
for any reason (other than the  
indefeasible payment in full in cash  
of the Obligations), including  
any claim of waiver, release, surrender,  
alteration or compromise of any of the  
Obligations, and shall not be subject  
to any defense or setoff, counterclaim,  
recoupment or termination whatsoever  
by reason of the invalidity, illegality  
or unenforceability of the Obligations  
or otherwise. Without limiting the  
generality of the foregoing, the  
obligations of each Guarantor hereunder  
shall not be discharged or impaired  
or otherwise affected by the failure  
of the Lender to assert any claim or  
demand or to enforce any remedy under  
the Credit Agreement, any other Loan  
Document or any other agreement, by  
any waiver or modification of any  
provision of any thereof, by any default,  
failure or delay, willful or otherwise,  
in the performance of the Obligations,  
or by any other act or  
omission that may or might in any  
manner or to the extent vary the  
risk of any Guarantor or that  
would otherwise operate as a  
discharge of each Guarantor as a  
matter of law or equity (other than  
the indefeasible payment in full in  
cash of all the Obligations).  
  
 Section 5. Defenses of  
Borrower Waived. To the fullest  
extent permitted by applicable law,  
each Guarantor waives any defense  
based on or arising out of any  
defense of the Borrower or the  
unenforceability of the Obligations  
or any part thereof from any cause,  
or the cessation from any cause of  
the liability of the Borrower, other  
than the final and indefeasible  
payment in full in cash of the  
Obligations. The Lender may, at  
their election, foreclose on any  
  
  
  
security held by one or more of them  
by one or more judicial or nonjudicial  
sales, accept an assignment of any such  
security in lieu of foreclosure,  
compromise or adjust any part of the  
Obligations, make any other accommodation  
with the Borrower or any other guarantor,  
without affecting or impairing in any way  
the liability of any Guarantor hereunder  
except to the extent the Obligations  
have been fully, finally and  
indefeasibly paid in cash. Pursuant to  
applicable law, each Guarantor waives any  
defense arising out of any such election  
even though such election operates,  
pursuant to applicable law, to impair or  
to extinguish any right of reimbursement or  
subrogation or other right or remedy of  
such Guarantor against the Borrower or any  
other Guarantor or guarantor, as the case  
may be, or any security.  
  
 Section 6. Agreement to Pay;  
Subordination. In furtherance of the  
foregoing and not in limitation of any  
other right that the Lender has at law or  
in equity against any Guarantor by  
virtue hereof, upon the failure of the  
Borrower or any other Loan Party to pay  
any Obligation when and as the same shall  
become due, whether at maturity, by  
acceleration, after notice of prepayment  
or otherwise, each Guarantor hereby  
promises to and will forthwith pay, or  
cause to be paid, to the Lender in cash  
the amount of such unpaid Obligations.  
Upon payment by any Guarantor of any sums  
to the Lender, all rights of such  
Guarantor against the Borrower arising as  
a result thereof by way of right of  
subrogation, contribution, reimbursement,  
indemnity or otherwise shall in all  
respects be subordinate and junior in  
right of payment to the prior indefeasible  
payment in full in cash of all the  
Obligations. In addition, any indebtedness  
of the Borrower now or hereafter held by  
any Guarantor is hereby subordinated in  
right of payment to the prior payment in  
full in cash of the Obligations. If any  
amount shall erroneously be paid to  
any Guarantor on account of (i) such  
subrogation, contribution, reimbursement,  
indemnity or similar right or (ii) any  
such indebtedness of the Borrower, such  
amount shall be held in trust for the  
benefit of the Lender and shall forthwith  
be paid to the Lender to be credited  
against the payment of the Obligations,  
whether matured or unmatured, in accordance  
with the terms of the Loan Documents.  
  
 Section 7. Information.  
Each Guarantor assumes all responsibility  
for being and keeping itself informed of  
the Borrower's financial condition and  
assets, and of all other circumstances  
bearing upon the risk of nonpayment of  
the Obligations and the nature, scope and  
extent of the risks that such Guarantor  
assumes and incurs hereunder, and agrees  
that the Lender will have no duty to  
advise any of the Guarantors of  
information known to it or any of them  
regarding such circumstances or risks.  
  
 Section 8. Representations  
and Warranties. Each Guarantor represents  
and warrants as to itself that all  
representations and warranties relating  
to it (as a Subsidiary of the Borrower)  
contained in the Credit Agreement are true  
and correct.  
  
 Section 9. Termination.  
The guarantees made hereunder (a) shall  
terminate when all the Obligations have  
been paid in full in cash and the Lender  
has no further commitment to lend  
under the Credit Agreement and (b)  
shall continue to be effective or be  
reinstated, as the case may be, if at  
any time payment, or any part thereof,  
of any Obligation is rescinded or must  
otherwise be restored by any Lender or  
any Guarantor upon the bankruptcy or  
reorganization of the Borrower, any  
Guarantor or otherwise. In connection  
with the foregoing, the Lender shall  
execute and deliver to such Guarantor  
or Guarantor's designee, at such  
Guarantor's expense, any  
  
  
  
documents or instruments which such  
Guarantor shall reasonably request  
from time to time to evidence such  
termination and release.  
  
 Section 10. Binding  
Effect; Several Agreement; Assignments.  
Whenever in this Agreement any of the  
parties hereto is referred to, such  
reference shall be deemed to include the  
successors and assigns of such party;  
and all covenants, promises and agreements  
by or on behalf of the Guarantors that  
are contained in this Agreement shall  
bind and inure to the benefit of each  
party hereto and their respective  
successors and assigns. This Agreement  
shall become effective as to any Guarantor  
when a counterpart hereof executed on  
behalf of such Guarantor shall have  
been delivered to the Lender, and a  
counterpart hereof shall have been  
executed on behalf of the Lender, and  
thereafter shall be binding upon such  
Guarantor and the Lender and their  
respective successors and assigns, and  
shall inure to the benefit of such  
Guarantor, and the Lender, and  
their respective successors and  
assigns, except that no Guarantor  
shall have the right to assign its  
rights or obligations hereunder or  
any interest herein (and any such  
attempted assignment shall be void).  
If all of the capital stock of a  
Guarantor is sold, transferred or  
otherwise disposed of pursuant to a  
transaction permitted by the Credit  
Agreement, such Guarantor shall be  
released from its obligations under  
this Agreement without further  
action. This Agreement shall be  
construed as a separate agreement  
with respect to each Guarantor  
and may be amended, modified,  
supplemented, waived or released  
with respect to any Guarantor  
without the approval of any other  
Guarantor and without affecting the  
obligations of any other Guarantor  
hereunder.  
  
 Section 11. Waivers;  
Amendment.  
  
 (a) No failure or delay  
of the Lender in exercising any  
power or right hereunder shall operate  
as a waiver thereof, nor shall any  
single or partial exercise of any such  
right or power, or any abandonment or  
discontinuance of steps to enforce  
such a right or power, preclude any  
other or further exercise thereof or  
the exercise of any other right or  
power. The rights of the Lender  
hereunder and under the other Loan  
Documents are cumulative and are not  
exclusive of any rights or remedies  
that they would otherwise have. No  
waiver of any provision of this  
Agreement or consent to any departure  
by any Guarantor therefrom shall in  
any event be effective unless the  
same shall be permitted by paragraph  
(b) below, and then such waiver and  
consent shall be effective only in  
the specific instance and for the  
purpose for which given. No  
notice or demand on any Guarantor  
in any case shall entitle such  
Guarantor to any other or  
further notice in similar or other  
circumstances.  
  
 (b) Neither this Agreement  
nor any provision hereof may be waived,  
amended or modified except pursuant to  
a written agreement entered into  
between the Guarantors with respect  
to which such waiver, amendment or  
modification relates and the Lender.  
  
 Section 12. Governing Law.  
THIS AGREEMENT SHALL BE GOVERNED BY, AND  
CONSTRUED IN ACCORDANCE WITH, THE LAWS OF  
THE STATE OF FLORIDA.  
  
 Section 13. Notices. All  
communications and notices hereunder  
shall be in writing and given as provided  
in Section 10.1 of the Credit Agreement.  
All communications and notices hereunder to  
each Guarantor shall be given to it at its  
address set forth on Schedule I attached  
hereto.  
  
  
  
 Section 14. Survival of  
Agreement; Severability.  
  
 (a) All covenants,  
agreements representations and  
warranties made by the Guarantors  
herein and in the certificates or other  
instruments prepared or delivered in  
connection with or pursuant to this  
Agreement or the other Loan Documents  
shall be considered to have been relied  
upon by the Lender and shall survive  
the making by the Lender of the Loans  
regardless of any investigation made  
by any of them or on their behalf,  
and shall continue in full force and  
effect as long as the principal of or  
any accrued interest on any Loan or  
any other fee or amount payable under  
this Agreement or any other Loan  
Document is outstanding and unpaid  
and as long as the Commitments have  
not been terminated.  
  
 (b) In the event one or  
more of the provisions contained in  
this Agreement or in any other Loan  
Document should be held invalid,  
illegal or unenforceable in any  
respect, the validity, legality and  
enforceability of the remaining  
provisions contained herein and  
therein shall not in any way be  
affected or impaired thereby (it  
being understood that the invalidity  
of a particular provision in a particular  
jurisdiction shall not in and of itself  
affect the validity of such provision  
in any other jurisdiction). The parties  
shall endeavor in good-faith negotiations  
to replace the invalid, illegal or  
unenforceable provisions with valid  
provisions the economic effect  
of which comes as close as possible  
to that of the invalid, illegal or  
unenforceable provisions.  
  
 Section 15. Counterparts.  
 This Agreement may be executed in  
counterparts, each of which shall  
constitute an original, but all of  
which when taken together shall  
constitute a single contract (subject  
to Section 10), and shall become  
effective as provided in Section 10.  
Delivery of an executed signature  
page to this Agreement by facsimile  
transmission shall be as effective as  
delivery of a manually executed  
counterpart of this Agreement.  
  
 Section 16. Rules of  
Interpretation. The rules of  
interpretation specified in Section 1.4  
of the Credit Agreement shall be  
applicable to this Agreement.  
  
 Section 17. Jurisdiction;  
Consent to Service of Process.  
  
 (a) Each Guarantor hereby  
irrevocably and unconditionally submits,  
for itself and its property, to the  
nonexclusive jurisdiction of the Circuit  
Court of Xxxxx County, Florida, or any  
Florida State court or Federal court of  
the United States of America sitting in  
Xxxxx County, Florida, and any appellate  
court from any thereof, in any action or  
proceeding arising out of or relating to  
this Agreement or the other Loan Documents,  
or for recognition or enforcement of any  
judgment, and each of the parties hereto  
hereby irrevocably and unconditionally agrees  
that all claims in respect of any such  
action or proceeding may be heard and  
determined in such Xxxxx County, Florida  
State court or, to the extent permitted  
by 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 shall affect  
any right that the Lender may otherwise  
have to bring any action or proceeding  
relating to this Agreement or the other  
Loan Documents against any Guarantor or  
its properties in the courts of any  
jurisdiction.  
  
  
  
 (b) Each Guarantor hereby  
irrevocably and unconditionally waives,  
to the fullest extent it may legally and  
effectively do so, any objection that it  
may now or hereafter have to the laying  
of venue of any suit, action or proceeding  
arising out of or relating to this Agreement  
or the other Loan Documents in the Circuit  
Court of Xxxxx County, Florida or any  
other appropriate Florida State or Federal  
court. Each of the parties hereto hereby  
irrevocably waives, to the fullest extent  
permitted by law, the defense of an  
inconvenient forum to the maintenance of  
such action or proceeding in any such court.  
  
 Section 18. Arbitration.  
  
 (a) Arbitration. The parties  
hereto agree, upon demand by any party, to  
submit to binding arbitration all claims,  
disputes and controversies between or among  
them (and their respective employees, officers,  
directors, attorneys, and other agents), whether  
in tort, contract or otherwise in any way  
arising out of or relating to (i) any credit  
subject hereto, or any of the Loan Documents,  
and their negotiation, execution,  
collateralization, administration,  
repayment, modification, extension,  
substitution, formation, inducement,  
enforcement, default or termination; or  
(ii) requests for additional credit.  
  
 (b) Governing Rules. Any  
arbitration proceeding will (i) proceed  
in a location in Florida selected by the  
American Arbitration Association ("AAA");  
(ii) be governed by the Federal Arbitration  
Act (Title 9 of the United States Code),  
notwithstanding any conflicting choice of  
law provision in any of the documents  
between the parties; and (iii) be conducted  
by the AAA, or such other administrator as  
the parties shall mutually agree upon, in  
accordance with the AAA's commercial dispute  
resolution procedures, unless the claim or  
counterclaim is at least $1,000,000.00  
exclusive of claimed interest, arbitration  
fees and costs in which case the arbitration  
shall be conducted in accordance with the  
AAA's optional procedures for large,  
complex commercial disputes (the commercial  
dispute resolution procedures or the optional  
procedures for large, complex commercial  
disputes to be referred to herein, as  
applicable, as the "Rules"). If there is  
any inconsistency between the terms hereof  
and the Rules, the terms and procedures set  
forth herein shall control. Any party who  
fails or refuses to submit to arbitration  
following a demand by any other party shall  
bear all costs and expenses incurred by such  
other party in compelling arbitration of any  
dispute. Nothing contained herein shall be  
deemed to be a waiver by any party that is  
a bank of the protections afforded to it  
under 12 U.S.C. Section 91 or any similar  
applicable state law.  
  
 (c) No Waiver of Provisional  
Remedies, Self-Help and Foreclosure. The  
arbitration requirement does not limit the  
right of any party to (i) foreclose against  
real or personal property collateral; (ii)  
exercise self-help remedies relating to  
collateral or proceeds of collateral such  
as setoff or repossession; or (iii)  
obtain provisional or ancillary remedies  
such as replevin, injunctive relief,  
attachment or the appointment of a  
receiver, before during or after the  
pendency of any arbitration proceeding.  
This exclusion does not constitute a  
waiver of the right or obligation of any  
party to submit any dispute to arbitration  
or reference hereunder, including  
those arising from the exercise of  
the actions detailed in sections (i),  
(ii) and (iii) of this paragraph.  
  
 (d) Arbitrator  
Qualifications and Powers. Any  
arbitration proceeding in which the  
amount in controversy is $5,000,000.00  
or less will be decided by a single  
arbitrator  
  
  
  
  
selected according to the Rules, and  
who shall not render an award of greater  
than $5,000,000.00. Any dispute in which  
the amount in controversy exceeds  
$5,000,000.00 shall be decided by  
majority vote of a panel of three  
arbitrators; provided however, that  
all three arbitrators must actively  
participate in all hearings and  
deliberations. The arbitrator will  
be a neutral attorney licensed in the  
State of Florida or a neutral retired  
judge of the state or federal judiciary  
of Florida, in either case with a  
minimum of ten years experience in  
the substantive law applicable to the  
subject matter of the dispute to be  
arbitrated. The arbitrator will determine  
whether or not an issue is arbitratable  
and will give effect to the statutes  
of limitation in determining any claim.  
In any arbitration proceeding the  
arbitrator will decide (by documents  
only or with a hearing at the  
arbitrator's discretion) any pre-  
hearing motions which are similar to  
motions to dismiss for failure to  
state a claim or motions for summary  
adjudication. The arbitrator shall  
resolve all disputes in accordance  
with the substantive law of Florida  
and may grant any remedy or relief  
that a court of such state could  
order or grant within the scope hereof  
and such ancillary relief as is  
necessary to make effective any award.  
The arbitrator shall also have the  
power to award recovery of all costs  
and fees, to impose sanctions and to  
take such other action as the  
arbitrator deems necessary to the  
same extent a judge could pursuant to the  
Federal Rules of Civil Procedure,  
the Florida Rules of Civil Procedure  
or other applicable law. Judgment  
upon the award rendered by the  
arbitrator may be entered in any  
court having jurisdiction. The  
institution and maintenance of an  
action for judicial relief or  
pursuit of a provisional or ancillary  
remedy shall not constitute a waiver  
of the right of any party, including  
the plaintiff, to submit the  
controversy or claim to arbitration  
if any other party contests such  
action for judicial relief.  
  
 (e) Discovery. In any  
arbitration proceeding, discovery  
will be permitted in accordance with  
the Rules. All discovery shall be  
expressly limited to matters directly  
relevant to the dispute being  
arbitrated and must be completed  
no later than 20 days before the  
hearing date. Any requests for an  
extension of the discovery periods,  
or any discovery disputes, will be  
subject to final determination by  
the arbitrator upon a showing that  
the request for discovery is essential  
for the party's presentation and  
that no alternative means for  
obtaining information is available.  
  
 (f) Class Proceedings  
and Consolidations. No party hereto  
shall be entitled to join or consolidate  
disputes by or against others in any  
arbitration, except parties who have  
executed any Loan Document, or to  
include in any arbitration any  
dispute as a representative or  
member of a class, or to act in  
any arbitration in the interest  
of the general public or in a private  
attorney general capacity.  
  
 (g) Payment Of  
Arbitration Costs And Fees.  
The arbitrator shall award all  
costs and expenses of the  
arbitration proceeding.  
  
 (h) Miscellaneous. To  
the maximum extent practicable, the  
AAA, the arbitrators and the parties  
shall take all action required to  
conclude any arbitration proceeding  
within 180 days of the filing of the  
dispute with the AAA. No arbitrator  
or other party to an arbitration  
proceeding may disclose the existence,  
content or results thereof, except for  
disclosures of information by a party  
required in the ordinary course of its  
business or by applicable law or  
regulation. If more than one agreement  
for arbitration by or between the parties  
potentially applies to a dispute, the  
arbitration provision most directly  
related to the Loan  
  
  
  
Documents or the subject matter of the  
dispute shall control. This arbitration  
provision shall survive termination,  
amendment or expiration of any of the  
Loan Documents or any relationship  
between the parties.  
  
 Section 19. Additional  
Guarantors. Pursuant to Section  
5.10 of the Credit Agreement,  
certain Subsidiaries that were not  
in existence on the date of the  
Credit Agreement are required  
to enter into this Agreement as a  
Guarantor. Upon execution and  
delivery after the date hereof  
by the Lender and such Subsidiary  
of an instrument in the form of Annex  
I, such Subsidiary shall become a  
Guarantor hereunder with the same  
force and effect as if originally  
named as a Guarantor herein. The  
execution and delivery of any  
instrument adding an additional  
Guarantor as a party to this  
Agreement shall not require the  
consent of any other Guarantor  
hereunder. The rights and  
obligations of each Guarantor  
hereunder shall remain in full  
force and effect notwithstanding  
the addition of any new Guarantor  
as a party to this Agreement.  
  
 Section 20. Right of  
Setoff. If an Event of Default  
shall have occurred and be  
continuing, Lender is hereby  
authorized at any time and from  
time to time, to the fullest extent  
permitted by law, to set off and  
apply any and all deposits (general  
or special, time or demand,  
provisional or final) at any time  
held and other Indebtedness at any  
time owing by such Lender  
to or for the credit or the account  
of any Guarantor against any or all  
the obligations of such  
Guarantor now or hereafter existing  
under this Agreement and the other  
Loan Documents held  
by such Lender, irrespective of  
 whether or not such Person shall  
have made any demand under  
this Agreement or any other Loan  
Document and although such  
obligations may be unmatured.  
The rights of each Lender under  
this Section 20 are in addition  
to other rights and remedies  
(including other rights of setoff)  
which such Lender may have.  
  
  
  
 IN WITNESS WHEREOF, the parties  
hereto have duly executed this Agreement  
as of the day and year first above written.  
  
 EACH OF THE SUBSIDIARIES  
 LISTED ON SCHEDULE I HERETO  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 XXXXX FARGO BANK, N.A.  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
  
  
  
 SCHEDULE I TO THE  
 SUBSIDIARY GUARANTEE AGREEMENT  
  
Guarantor(s) Address  
  
FRTL, Inc. 000 X. Xxxxxxx Xxxxxx, 0xx Xxxxx  
 Xxxxxxxxxxxx, XX 00000  
  
Florida Rock and  
 Tank Lines, Inc. 000 X. Xxxxxxx Xxxxxx, 0xx Xxxxx  
 Xxxxxxxxxxxx, XX 00000  
  
STI Holdings, Inc. 000 X. Xxxxxxx Xxxxxx, 0xx Xxxxx  
 Xxxxxxxxxxxx, XX 00000  
  
Florida Rock  
 Properties, Inc. 000 X. Xxxxxxx Xxxxxx, 0xx Xxxxx  
 Xxxxxxxxxxxx, Xx 00000  
  
FRP Development Corp. 000 X. Xxxxxxx Xxxxxx, 0xx Xxxxx  
 Xxxxxxxxxxxx, Xx 00000  
  
  
  
  
  
 ANNEX I TO THE  
 SUBSIDIARY GUARANTEE AGREEMENT  
  
 SUPPLEMENT NO. [\_\_\_\_] dated as  
of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], to the Subsidiary  
Guarantee Agreement (the "Guarantee  
Agreement") dated as of December \_\_,  
2012 among each of the subsidiaries  
listed on Schedule I thereto (each  
such Subsidiary individually, a "Guarantor"  
and collectively, the "Guarantors") of  
PATRIOT TRANSPORTATION HOLDING, INC., a  
Florida corporation (the "Borrower"),  
and XXXXX FARGO BANK, N.A., a national  
banking association (the "Lender").  
  
 A. Reference is made to  
the 2012 Amended and Restated Credit  
Agreement dated as of December \_\_, 2012  
(as amended, supplemented or otherwise  
modified from time to time, the "Credit  
Agreement"), between the Borrower and  
the Lender. Capitalized terms used herein  
and not otherwise defined herein shall  
have the meanings assigned to such terms  
in the Credit Agreement.  
  
 B. The Guarantors have  
entered into the Guarantee Agreement  
in order to induce the Lenders to make  
Loans. Pursuant to Section 5.10 of the  
Credit Agreement, certain Subsidiaries  
that were not in existence on the date  
of the Credit Agreement are required  
to enter into the Guarantee Agreement  
as a Guarantor. Section 19 of the  
Guarantee Agreement provides that  
additional Subsidiaries of the Borrower  
may become Guarantors under the  
Guarantee Agreement by execution and  
delivery of an instrument in the form  
of this Supplement. The undersigned  
Subsidiary of the Borrower (the "New  
Guarantor") is executing this Supplement  
in accordance with the requirements of  
the Credit Agreement to become a  
Guarantor under the Guarantee Agreement  
in order to induce the Lenders to make  
additional Loans and as consideration  
for Loans previously made.  
  
 Accordingly, the Lender and the  
New Guarantor agree as follows:  
  
 Section 1. In accordance  
with Section 19 of the Guarantee  
Agreement, the New Guarantor by its  
signature below becomes a Guarantor  
under the Guarantee Agreement with the  
same force and effect as if originally  
named therein as a Guarantor and the  
New Guarantor hereby (a) agrees to all  
the terms and provisions of the  
Guarantee Agreement applicable to it as  
Guarantor thereunder and (b) represents  
and warrants that the representations  
and warranties made by it as a Guarantor  
thereunder are true and correct on and  
as of the date hereof. Each reference  
to a Guarantor in the Guarantee Agreement  
shall be deemed to include the New  
Guarantor. The Guarantee Agreement is  
hereby incorporated herein by reference.  
  
 Section 2. The New Guarantor  
represents and warrants to the Lender that  
this Supplement has been duly authorized,  
executed and delivered by it and  
constitutes its legal, valid and binding  
obligation, enforceable against it in  
accordance with its terms.  
  
 Section 3. This Supplement  
may be executed in counterparts each of  
which shall constitute an original, but  
all of which when taken together shall  
constitute a single contract. This  
Supplement shall become effective when  
the Lender shall have received counterparts  
of this Supplement that, when taken  
together, bear the signatures of the New  
Guarantor and the Lender.  
  
  
  
  
Delivery of an executed signature page  
to this Supplement by facsimile  
transmission shall be as effective as  
delivery of a manually signed  
counterpart of this Supplement.  
  
 Section 4. Except as  
expressly supplemented hereby, the  
Guarantee Agreement shall remain in  
full force and effect.  
  
 Section 5. THIS SUPPLEMENT  
SHALL BE GOVERNED BY, AND CONSTRUED  
IN ACCORDANCE WITH, THE LAWS OF THE  
STATE OF FLORIDA.  
  
 Section 6. In case  
any one or more of the provisions  
contained in this Supplement  
should be held invalid, illegal  
or unenforceable in any respect,  
the validity, legality and  
enforceability of the remaining  
provisions contained herein and in  
the Guarantee Agreement shall  
not in any way be affected or  
impaired thereby (it being understood  
that the invalidity of a  
particular provision hereof in a  
particular jurisdiction shall not  
in and of itself affect the validity  
of such provision in any other  
jurisdiction). The parties hereto  
shall endeavor in good-faith  
negotiations to replace the invalid,  
illegal or unenforceable provisions  
with valid provisions the  
economic effect of which comes as  
close as possible to that of the  
invalid, illegal or  
unenforceable provisions.  
  
 Section 7. All  
communications and notices  
hereunder shall be in writing  
and given as provided in Section  
13 of the Guarantee Agreement.  
All communications and notices hereunder  
to the New Guarantor shall be given  
to it at the address set forth  
under its signature below, with  
a copy to the Borrower.  
  
 Section 8. The New  
Guarantor agrees to reimburse the  
Lender for its out-of-pocket  
expenses in connection with this  
Supplement, including the fees,  
disbursements and other  
charges of counsel for the Lender.  
  
 IN WITNESS WHEREOF, the New  
Guarantor and the Administrative  
Agent have duly executed this  
Supplement to the Guarantee  
Agreement as of the day and  
year first above written.  
  
 [Name of New Guarantor]  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
 XXXXX FARGO BANK, N.A.  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
  
 EXHIBIT D  
  
 [FORM OF]  
INDEMNITY, SUBROGATION AND CONTRIBUTION AGREEMENT  
  
 INDEMNITY, SUBROGATION AND CONTRIBUTION  
AGREEMENT dated as of December \_\_, 2012 among  
PATRIOT TRANSPORTATION HOLDING, INC., a Florida  
corporation (the "Borrower"), each Subsidiary  
listed on Schedule I hereto (the "Guarantors"),  
and XXXXX FARGO BANK, N.A., a national banking  
association (the "Lender").  
  
 Reference is made to (a) the 2012  
Amended and Restated Credit Agreement dated  
as of December \_\_, 2012 (as amended,  
supplemented or otherwise modified from time  
to time, the "Credit Agreement"), among the  
Borrower and the Lender and (b) the Subsidiary  
Guarantee Agreement dated as of December \_\_,  
2012, among the Guarantors and the Lender  
(as amended, supplemented or otherwise  
modified from time to time, the "Guarantee  
Agreement"). Capitalized terms used herein  
and not defined herein shall have the  
meanings assigned to such terms in the  
Credit Agreement.  
  
 The Lender has agreed to make Loans  
to the Borrower, pursuant to, and upon  
the terms and subject to the conditions  
specified in, the Credit Agreement. The  
Guarantors have guaranteed such Loans and  
the other Obligations (as defined in the  
Guarantee Agreement) of the Borrower under  
the Credit Agreement pursuant to the  
Guarantee Agreement. The obligation of  
the Lenders to make Loans is conditioned  
on, among other things, the execution and  
delivery by the Borrower and the Guarantors  
of an agreement in the form hereof.  
  
 Accordingly, the Borrower, each  
Guarantor and the Lender agree as follows:  
  
 Section 1. Indemnity and  
Subrogation. In addition to all such  
rights of indemnity and subrogation as the  
Guarantors may have under applicable law  
(but subject to Section 3), the Borrower  
agrees that (a) in the event a payment  
shall be made by any Guarantor under the  
Guarantee Agreement, the Borrower shall  
indemnify such Guarantor for the full  
amount of such payment and such Guarantor  
shall be subrogated to the rights of the  
person to whom such payment shall have  
been made to the extent of such payment.  
  
 Section 2. Contribution  
and Subrogation. Each Guarantor (a  
"Contributing Guarantor") agrees  
(subject to Section 3) that, in the  
event a payment shall be made by any other  
Guarantor under the Guarantee Agreement  
and such other Guarantor (the "Claiming  
Guarantor") shall not have been fully  
indemnified by the Borrower as provided  
in Section 1, the Contributing Guarantor  
shall indemnify the Claiming Guarantor in  
an amount equal to the amount of such  
payment in each case multiplied by a  
fraction of which the numerator shall be  
the net worth of the Contributing Guarantor  
on the date hereof and the denominator  
shall be the aggregate net worth of all  
the Guarantors on the date hereof (or, in  
the case of any Guarantor becoming a party  
hereto pursuant to Section 12, the date of  
the Supplement hereto executed and  
delivered by such Guarantor). Any  
Contributing Guarantor making any payment  
to a Claiming Guarantor pursuant to this  
Section 2 shall be subrogated to the  
rights of such Claiming Guarantor  
under Section 1 to the extent of such  
payment.  
  
  
  
  
 Section 3. Subordination.  
Notwithstanding any provision of this  
Agreement to the contrary, all rights  
of the Guarantors under Sections 1 and  
2 and all other rights of indemnity,  
contribution or subrogation under  
applicable law or otherwise shall be  
fully subordinated to the indefeasible  
payment in full in cash of the Obligations.  
No failure on the part of the Borrower or  
any Guarantor to make the payments  
required under applicable law or otherwise  
shall in any respect limit the obligations  
and liabilities of any Guarantor with  
respect to its obligations hereunder, and  
each Guarantor shall remain liable for  
the full amount of the obligations of such  
Guarantor hereunder.  
  
 Section 4. Termination.  
This Agreement shall survive and be in  
full force and effect so long as any  
Obligation is outstanding and has not been  
indefeasibly paid in full in cash, and so  
long as any of the Commitments under the  
Credit Agreement have not been terminated,  
and shall continue to be effective or be  
reinstated, as the case may be, if at any  
time payment, or any part thereof, of any  
Obligation is rescinded or must otherwise  
be restored by any Lender or any Guarantor  
upon the bankruptcy or reorganization of  
the Borrower, any Guarantor or otherwise.  
  
 Section 5. Governing Law.  
THIS AGREEMENT SHALL BE GOVERNED BY,  
AND CONSTRUED IN ACCORDANCE WITH, THE LAWS  
OF THE STATE OF FLORIDA.  
  
 Section 6. No Waiver; Amendment.  
  
 (a) No failure on the part of  
the Lender or any Guarantor to exercise,  
and no delay in exercising, any right,  
power or remedy hereunder shall operate  
as a waiver thereof, nor shall any single  
or partial exercise of any such right,  
power or remedy by the Lender or any  
Guarantor preclude any other or further  
exercise thereof or the exercise of any  
other right, power or remedy. All remedies  
hereunder are cumulative and are not  
exclusive of any other remedies provided  
by law. None of the Lender and the  
Guarantors shall be deemed to have waived  
any rights hereunder unless such waiver  
shall be in writing and signed by such  
parties.  
  
 (b) Neither this Agreement  
nor any provision hereof may be waived,  
amended or modified except pursuant to  
a written agreement entered into  
between the Borrower, the Guarantors  
and the Lender.  
  
 Section 7. Notices.  
All communications and notices  
hereunder shall be in writing and  
given as provided in the Guarantee  
Agreement and addressed as  
specified therein.  
  
 Section 8. Binding  
Agreement; Assignments. Whenever in  
this Agreement any of the parties  
hereto is referred to, such reference  
shall be deemed to include the successors  
and assigns of such party; and all  
covenants, promises and agreements by  
or on behalf of the parties that are  
contained in this Agreement shall bind  
and inure to the benefit of their respective  
successors and assigns. Neither the  
Borrower nor any Guarantor may assign or  
transfer any of its rights or obligations  
hereunder (and any such attempted  
assignment or transfer shall be void)  
without the prior written consent of the  
Lender. Notwithstanding the foregoing,  
at the time any Guarantor is released  
from its obligations under the Guarantee  
Agreement in accordance with such  
Guarantee Agreement and the Credit  
Agreement, such Guarantor will cease to  
have any rights or obligations under this  
Agreement.  
  
 Section 9. Survival of  
Agreement; Severability.  
  
  
  
  
 (a) All covenants and  
agreements made by the Borrower and  
each Guarantor herein and in the  
certificates or other instruments  
prepared or delivered in connection  
with this Agreement or the other Loan  
Documents shall be considered to have  
been relied upon by the  
Lender and each Guarantor and shall  
survive the making by the Lenders of  
the Loans, and shall continue in full  
force and effect as long as the  
principal of or any accrued interest  
on any Loans or any other fee or  
amount payable under the Credit  
Agreement or this Agreement or under  
any of the other Loan Documents is  
outstanding and unpaid and as long  
as the Commitments have not been  
terminated.  
  
 (b) In case one or more  
of the provisions contained in this  
Agreement should be held invalid,  
illegal or unenforceable in any  
respect, no party hereto shall be  
required to comply with such  
provision for so long as such  
provision is held to be invalid,  
illegal or unenforceable, but the  
validity, legality and enforceability  
of the remaining provisions contained  
herein shall not in any way be  
affected or impaired thereby. The  
parties shall endeavor in good-  
faith negotiations to replace the  
invalid, illegal or unenforceable  
provisions with valid provisions  
the economic effect of which comes  
as close as possible to that of the  
invalid, illegal or  
unenforceable provisions.  
  
 Section 10. Counterparts.  
This Agreement may be executed in  
counterparts (and by different parties  
hereto on different counterparts) each  
of which shall constitute an original,  
but all of which when taken together  
shall constitute a single contract.  
This Agreement shall be effective with  
respect to any Guarantor when a  
counterpart bearing the signature of  
such Guarantor shall have been delivered  
to the Lender. Delivery of an  
executed signature page to this  
Agreement by facsimile transmission  
shall be as effective as delivery of a  
manually signed counterpart of this  
Agreement.  
  
 Section 11. Rules of  
Interpretation. The rules of  
interpretation specified in Section 1.4  
of the Credit Agreement shall be  
applicable to this Agreement.  
  
 Section 12. Additional  
Guarantors. Pursuant to Section 5.10  
of the Credit Agreement, certain  
Subsidiaries of the Borrower that  
were not in existence on the date  
of the Credit Agreement are required  
to enter into the Guarantee Agreement  
as Guarantor. Upon the execution and  
delivery, after the date hereof, by  
the Lender and such Subsidiary of an  
instrument in the form of Annex I hereto,  
such Subsidiary shall become a Guarantor  
hereunder with the same force and effect  
as if originally named as a Guarantor  
hereunder. The execution and delivery of  
any instrument adding an additional  
Guarantor as a party to this Agreement  
shall not require the consent of any  
Guarantor hereunder. The rights and  
obligations of each Guarantor  
hereunder shall remain in full force  
and effect notwithstanding the  
addition of any new Guarantor as  
a party to this Agreement.  
  
 IN WITNESS WHEREOF, the parties  
hereto have caused this Agreement to  
be executed by their duly authorized  
officers as of the date first appearing  
above.  
  
  
  
  
  
 PATRIOT TRANSPORTATION  
 HOLDING, INC.  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 EACH OF THE SUBSIDIARIES  
 LISTED ON SCHEDULE I HERETO, as  
 a Guarantor  
  
 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 XXXXX FARGO BANK, N.A.  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
 SCHEDULE I  
 TO THE INDEMNITY, SUBROGATION  
 AND CONTRIBUTION AGREEMENT  
  
 Guarantors  
  
  
Name Address  
  
FRTL, Inc. 000 X. Xxxxxxx Xxxxxx, 0xx Xxxxx  
 Xxxxxxxxxxxx, XX 00000  
  
Florida Rock and Tank Lines,  
 Inc. 000 X. Xxxxxxx Xxxxxx, 0xx Xxxxx  
 Xxxxxxxxxxxx, XX 00000  
  
Florida Rock Properties, Inc. 000 X. Xxxxxxx Xxxxxx, 0xx Xxxxx  
 Xxxxxxxxxxxx, Xx 00000  
  
FRP Development Corp. 000 X. Xxxxxxx Xxxxxx, 0xx Xxxxx  
 Xxxxxxxxxxxx, Xx 00000  
  
STI Holdings, Inc. 000 X. Xxxxxxx Xxxxxx, 0xx Xxxxx  
 Xxxxxxxxxxxx, Xx 00000  
  
  
  
  
 ANNEX I  
 TO INDEMNITY, SUBROGATION AND  
 CONTRIBUTION AGREEMENT  
  
 SUPPLEMENT NO. [\_\_\_\_] dated as of  
[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], to the Indemnity,  
Subrogation and Contribution Agreement  
dated as of December \_\_, 2012 (as the  
same may be amended, supplemented or  
otherwise modified from time to time,  
the "Indemnity, Subrogation and  
Contribution Agreement") among PATRIOT  
TRANSPORTATION HOLDING, INC., a  
Florida corporation (the "Borrower"),  
each Subsidiary listed on Schedule I  
thereto (the "Guarantors") and XXXXX  
FARGO BANK, N.A. (the "Lender").  
  
 A. Reference is made to  
(a) the 2012 Amended and Restated  
Credit Agreement dated as of December  
\_\_, 2012 (as amended, supplemented or  
otherwise modified from time to  
time, the "Credit Agreement"), between  
the Borrower and the Lender, and (b)  
the Subsidiary Guarantee Agreement  
 dated as of December \_\_, 2012, among  
the Guarantors and the Lender (as  
amended, supplemented or otherwise  
modified from time to time, the  
"Guarantee Agreement").  
  
 B. Capitalized terms  
used herein and not otherwise defined  
herein shall have the meanings assigned  
to such terms in the Indemnity,  
Subrogation and Contribution Agreement  
and the Credit Agreement.  
  
 C. The Borrower and the  
Guarantors have entered into the  
Indemnity, Subrogation and Contribution  
Agreement in order to induce the Lender  
to make Loans. Pursuant to Section  
5.10 of the Credit Agreement, certain  
Subsidiaries that were not in existence  
on the date of the Credit Agreement are  
required to enter into the Guarantee  
Agreement as a Guarantor. Section 12  
of the Indemnity, Subrogation and  
Contribution Agreement provides that  
additional Subsidiaries may become  
Guarantors under the Indemnity,  
Subrogation and Contribution Agreement  
by execution and delivery of an  
instrument in the form of this  
Supplement. The undersigned  
Subsidiary (the "New Guarantor") is  
executing this Supplement in accordance  
with the requirements of the Credit  
Agreement to become a Guarantor under  
the Indemnity, Subrogation and Contribution  
Agreement in order to induce the Lenders  
to make additional Loans and as  
consideration for Loans previously made.  
  
 Accordingly, the Lender and the New  
Guarantor agree as follows:  
  
 Section 1. In accordance  
with Section 12 of the Indemnity,  
Subrogation and Contribution Agreement,  
the New Guarantor by its signature below  
becomes a Guarantor under the Indemnity,  
Subrogation and Contribution Agreement  
with the same force and effect as if  
originally named therein as a Guarantor  
and the New Guarantor hereby agrees  
to all the terms and provisions of the  
Indemnity, Subrogation and Contribution  
Agreement applicable to it as Guarantor  
thereunder. Each reference to a Guarantor  
in the Indemnity, Subrogation and  
Contribution Agreement shall be deemed  
to include the New Guarantor. The  
Indemnity, Subrogation and Contribution  
Agreement is hereby incorporated herein  
by reference.  
  
  
  
 Section 2. The New Guarantor  
represents and warrants to the Lender that  
this Supplement has been duly authorized,  
executed and delivered by it and  
constitutes its legal, valid and binding  
obligation, enforceable against it in  
accordance with its terms.  
  
 Section 3. This Supplement  
may be executed in counterparts (and by  
different parties hereto on different  
counterparts) each of which shall  
constitute an original, but all of  
which when taken together shall  
constitute a single contract. This  
Supplement shall become effective when  
the Lender shall have received  
counterparts of this Supplement that,  
when taken together, bear the signature  
of the New Guarantor and the Lender.  
Delivery of an executed signature  
page to this Supplement by facsimile  
transmission shall be as effective as  
delivery of a manually signed  
counterpart of this Supplement.  
  
 Section 4. Except as  
expressly supplemented hereby, the  
Indemnity, Subrogation and  
Contribution Agreement shall remain  
in full force and effect.  
  
 Section 5. THIS  
SUPPLEMENT SHALL BE GOVERNED BY, AND  
CONSTRUED IN ACCORDANCE WITH, THE  
LAWS OF THE STATE OF FLORIDA.  
  
 Section 6. In case any  
one or more of the provisions contained  
in this Supplement should be held  
invalid, illegal or unenforceable  
in any respect, neither party hereto  
shall be required to comply with such  
provision for so long as such  
provision is held to be invalid,  
illegal or unenforceable, but the  
validity, legality and enforceability  
of the remaining provisions  
contained herein and in the Indemnity,  
Subrogation and Contribution Agreement  
shall not in any way be affected or  
impaired. The parties hereto shall  
endeavor in good-faith negotiations to  
replace the invalid, illegal or  
unenforceable provisions with valid  
provisions the economic effect  
of which comes as close as possible to  
that of the invalid, illegal or  
unenforceable provisions.  
  
 Section 7. All  
communications and notices hereunder  
shall be in writing and given as  
provided in Section 7 of the  
Indemnity, Subrogation and Contribution  
Agreement. All communications and  
notices hereunder to the New Guarantor  
shall be given to it at the address  
set forth under its signature.  
  
 Section 8. The New Guarantor  
agrees to reimburse the Lender for its  
reasonable out-of-pocket expenses in  
connection with this Supplement,  
including the reasonable fees, other  
charges and disbursements of counsel  
for the Lender.  
  
  
  
  
 IN WITNESS WHEREOF, the New  
Guarantor and the Lender have duly  
executed this Supplement to the  
Indemnity, Subrogation and Contribution  
Agreement as of the day and year  
first above written.  
  
 [Name of New Guarantor]  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
 XXXXX FARGO BANK, N.A.  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
  
 SCHEDULE I  
  
 TO SUPPLEMENT NO. \_\_\_\_ TO THE INDEMNITY,  
 SUBROGATION AND CONTRIBUTION AGREEMENT  
  
 Guarantors  
  
Name Address  
  
  
  
  
  
  
 EXHIBIT 2.3  
  
 NOTICE OF REVOLVING LOAN BORROWING  
  
 [Date]  
  
Xxxxx Fargo Bank, N.A.  
One Independent Drive, 25th Floor  
Xxxxxxxxxxxx, Xxxxxxx 00000  
  
Dear Sirs:  
  
 Reference is made to the 2012  
Amended and Restated Credit Agreement  
dated as of December \_\_, 2012 (as  
amended and in effect on the date  
hereof, the "Credit Agreement"),  
between the undersigned, as Borrower,  
and Xxxxx Fargo Bank, N.A., as Lender.  
Terms defined in the Credit Agreement  
are used herein with the same meanings.  
This notice constitutes a Notice of  
Revolving Loan Borrowing, and the  
Borrower hereby requests a Revolving  
Loan Borrowing under the Credit  
Agreement, and in that connection  
the Borrower specifies the following  
information with respect to the  
Revolving Loan Borrowing requested  
hereby:  
  
(A) Aggregate principal amount of  
 Revolving Borrowing :  
  
(B) Date of Revolving Loan Borrowing  
 (which is a Business Day):  
  
(C) Interest Rate basis :  
  
(D) Interest Period :  
  
(E) Location and number of Borrower's  
 account to which proceeds of  
 Revolving Borrowing are to be  
 disbursed:  
  
  
  
 The Borrower hereby represents  
and warrants that the conditions  
specified in paragraphs (a), (b) and  
(c) of Section 3.2 of the Credit  
Agreement are satisfied.  
  
 Very truly yours,  
  
 PATRIOT TRANSPORTATION  
 HOLDING, INC.  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
  
 EXHIBIT 2.5  
  
 NOTICE OF TERM LOAN BORROWING  
  
 [Date]  
  
Xxxxx Fargo Bank, N.A.  
One Independent Drive, 25th Floor  
Xxxxxxxxxxxx, Xxxxxxx 00000  
  
Dear Sirs:  
  
 Reference is made to the 2012  
Amended and Restated Credit Agreement  
dated as of December \_\_, 2012 (as amended  
and in effect on the date hereof, the  
"Credit Agreement"), between the  
undersigned, as Borrower, and Xxxxx  
Fargo Bank, N.A., as Lender. Terms  
defined in the Credit Agreement are  
used herein with the same meanings.  
This notice constitutes a Notice of  
Term Loan Borrowing, and the Borrower  
hereby requests a Term Laon Borrowing  
under the Credit Agreement, and in  
that connection the Borrower  
specifies the following information with  
respect to the Revolving Borrowing  
requested hereby:  
  
(A) Aggregate principal amount of  
 Term Loan Borrowing :  
  
(B) Date of Term Loan Borrowing  
 (which is a Business Day):  
  
(C) Interest Rate basis :  
  
(D) Interest Period :  
  
(E) Location and number of Borrower's  
 account to which proceeds of Term  
 Loan Borrowing are to be disbursed:  
  
  
  
  
The Borrower hereby represents and  
warrants that the conditions specified  
in paragraphs (a), (b) and (c) of Section  
3.2 of the Credit Agreement are satisfied.  
  
 Very truly yours,  
  
 PATRIOT TRANSPORTATION  
 HOLDING, INC.  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
  
 EXHIBIT 2.7  
  
 NOTICE OF CONTINUATION/CONVERSION  
  
 [Date]  
  
Xxxxx Fargo Bank, N.A.  
One Independent Drive, 25th Floor  
Xxxxxxxxxxxx, Xxxxxxx 00000  
  
Dear Sirs:  
  
 Reference is made to the 2012  
Amended and Restated Credit Agreement  
dated as of December \_\_, 2012 (as  
amended and in effect on the date  
hereof, the "Credit Agreement"),  
between the undersigned, as Borrower,  
and Xxxxx Fargo Bank, N.A., as Lender.  
Terms defined in the Credit Agreement  
are used herein with the same meanings.  
This notice constitutes a Notice of  
Revolving Borrowing, and the Borrower  
hereby requests a Revolving Borrowing under  
the Credit Agreement, and in that  
connection the Borrower specifies the  
following information with respect to  
the Revolving Borrowing requested hereby:  
  
(A) Revolving Borrowing to which  
 this request applies:  
  
(B) Principal amount of Revolving  
 Borrowing to be converted/continued:  
  
(C) Effective date of election (which  
 is a Business Day):  
  
(D) Interest rate basis:  
  
(E) Interest Period:  
  
 Very truly yours,  
  
 PATRIOT TRANSPORTATION  
 HOLDING, INC.  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
  
  
 EXHIBIT 3.1(b)(iv)  
  
 FORM OF SECRETARY'S CERTIFICATE  
  
 Reference is made to the 2012 Amended  
and Restated Credit Agreement dated as of  
December \_\_, 2012 (as amended and in effect  
on the date hereof, the "Credit Agreement"),  
between the undersigned, as Borrower, and  
Xxxxx Fargo Bank, N.A., as Lender. Terms  
defined in the Credit Agreement are used  
herein with the same meanings. This  
Certificate is being delivered pursuant  
to Section 3.1(b)(iv) of the Credit  
Agreement.  
  
 I, [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], Secretary  
of the Borrower, DO HEREBY CERTIFY that:  
  
 (a) annexed hereto as Exhibit  
A is a true and correct copy of the articles  
of incorporation of the Borrower, which  
have not been amended, modified,  
supplemented or restated except as set  
forth in Exhibit A and remain in full  
force and effect as of the date hereof;  
  
 (b) no proceeding have been  
instituted or are pending or contemplated  
with respect to the dissolution,  
liquidation or sale of all or  
substantially all the assets of  
the Borrower or threatening its  
existence or the forfeiture or any  
of its corporate rights;  
  
 (c) annexed hereto as  
Exhibit B is a true and correct copy  
of the Bylaws of the Borrower as in  
effect on the date of the attached  
Resolutions and at all times  
thereafter through the date hereof;  
  
 (d) annexed hereto as  
Exhibit C is a true and correct  
copy of certain resolutions duly  
adopted by the Board of Directors  
of the Borrower at a meeting of  
said Board of Directors duly  
called and held on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  
2012, which resolutions are the only  
resolutions adopted by the Board of  
Directors of the Borrower or any  
committee thereof relating to the  
Credit Agreement and the other Loan  
Documents to which the Borrower is  
a party and the transactions  
contemplated therein and have  
not been revoked, amended,  
supplemented or modified and are in  
full force and effect on the date  
hereof; and  
  
 (e) each of the persons  
named below is a duly elected and  
qualified officer of the Borrower  
holding the respective office set  
forth opposite his or her name and  
the signature set forth opposite  
each such person's name is his or  
her genuine signature:  
  
 Name Title Specimen Signature  
  
[Include all  
officers who are  
signing the  
Credit Agreement  
or any other Loan  
Documents.]  
  
  
  
  
  
 IN WITNESS WHEREOF, I have  
hereunto signed my name this \_\_\_ day  
of December, 2012.  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Secretary  
  
  
 I, [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_],  
[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] of the Borrower,  
do hereby certify that [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  
has been duly elected, is duly qualified and  
is currently serving as the [Assistant]  
Secretary of the Borrower, that the signature  
set forth above is [his/her] genuine  
signature and that [he/she] has held such  
office at all times since [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].  
  
 IN WITNESS WHEREOF, I have hereunto  
signed my name this \_\_\_ day of December, 2012.  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:  
  
  
  
  
 EXHIBIT 3.1(b)(vii)  
  
 FORM OF OFFICER'S CERTIFICATE  
  
 Reference is made to the 2012 Amended  
and Restated Credit Agreement dated as of  
December \_\_, 2012 (as amended and in effect  
on the date hereof, the "Credit Agreement"),  
between the undersigned, as Borrower, and  
Xxxxx Fargo Bank, N.A., as Lender. Terms  
defined in the Credit Agreement are used  
herein with the same meanings. This  
Certificate is being delivered pursuant to  
Section 3.1(b)(vii) of the Credit Agreement.  
  
 I, [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_],  
[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] of the Borrower, DO  
HEREBY CERTIFY that:  
  
 (a) the representations and  
warranties of the Borrower set forth in  
the Credit Agreement are true and correct  
on and as of the date hereof; and  
  
 (b) no Default or Event of  
Default has occurred and is continuing  
at the date hereof; and  
  
 (c) since [the date], which  
is the date of the most recent financial  
statements described in Section 5.1(a)  
of the Credit Agreement, there has been  
no change which has had or could  
reasonably be expected to have a  
Material Adverse Effect; and  
  
 (d) no consents, approvals,  
authorizations, registrations or filings  
are required to be made or obtained by  
or on behalf of the Borrower or any of  
the Guarantors in connection with  
the Loans.  
  
 IN WITNESS WHEREOF, I have hereunto  
signed my name this \_\_\_ day of December,  
2012.  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
  
 Annex I  
  
 Captive Investment Policy Statement  
  
  
The primary criteria for investments shall  
be safety of principal and liquidity. Return  
on investment shall not take precedence over  
safety of principal.  
  
1. Investments may be either in fixed or  
floating rate instruments denominated in U. S.  
dollars.  
  
2. Investments can include U.S. Treasury  
Securities, U.S Government Agency securities,  
U.S. Agency mortgage-backed securities and  
collateralized mortgage obligations and U.S.  
Corporate Bonds. Investments in certificates  
of deposit and time deposits in U.S. banks  
may also be made.  
  
3. Investments will be made in various  
issuers to ensure proper diversification.  
  
4. The fixed income portfolio shall be  
laddered to meet the cash flow needs of  
the program. Generally ten to twenty  
percent of the portfolio will be invested  
in securities having maturities of two  
years or less from the date of purchase.  
For this purpose, floating rate certificates  
of deposit and notes, irrespective of final  
maturity, are deemed to be mature on the  
next coupon-reset date. The portfolio will  
generally invest in securities that mature  
in ten years or less from the date of  
purchase.  
  
5. In order for the securities of an issuer  
to qualify for investment of assets, they  
must have either a Xxxxx'x, S&P or Fitch  
rating of "A-" or better or such issues  
must be unconditionally guaranteed by a  
company or entity with a Xxxxx'x, S&P or  
Fitch rating of "A-" or better or, in  
the event of an issue not being subject  
to such a guarantee or rating, the  
equivalent as determined by the  
investment manager.  
  
National Interstate Insurance retains the  
final right of approval for all investment  
transactions