

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

COMERICA BANK,
a Texas banking association,

Plaintiff,

vs.

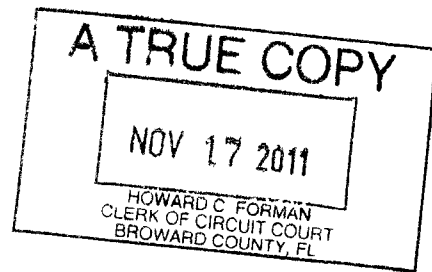
OCEAN 4660, LLC a Florida limited
liability company, OCEANSIDE
LAUDERDALE, INC., a Florida
corporation, KENNETH A. FRANK,
individually, ANGELA DIPILATO,
individually, TOWN OF
LAUDERDALE-BY-THE-SEA, a
political subdivision of the State of
Florida, WASTE MANAGEMENT
INC. OF FLORIDA d/b/a SOUTHERN
SANITATION SERVICE, a Florida
corporation, AFFINITY
MECHANICAL INC., a Florida
corporation, and BROWARD
COUNTY, a political subdivision of
the State of Florida,

Defendants.

CASE NO.

03

11-28447



COMPLAINT FOR FORECLOSURE

Plaintiff Comerica Bank, a Texas banking association ("Comerica"), sues
Defendants Ocean 4660, LLC ("Ocean 4660"), Oceanside Lauderdale, Inc.
("Oceanside Lauderdale"), Kenneth A. Frank ("Frank"), Angela Dipilato ("Dipilato")
Town of Lauderdale-By-The-Sea (the "Town"), Waste Management Inc. of Florida
d/b/a Southern Sanitation ("WMIF"), Affinity Mechanical Inc. ("Affinity"), and
Broward County (the "County"), and states:

GENERAL AND JURISDICTIONAL ALLEGATIONS

1. This is an action to foreclose on real and personal property located in Broward County, Florida.
2. Comerica is a Texas banking association.
3. Ocean 4660 is a Florida limited liability company doing business in Broward County, Florida.
4. Oceanside Lauderdale is a Florida corporation with its principal place of business in Broward County, Florida.
5. Upon information and belief, Frank is an adult resident of Broward County, Florida and is otherwise *sui juris*.
6. Upon information and belief, Dipilato is an adult resident of Broward County, Florida and is otherwise *sui juris*.
7. The Town is a political subdivision of the State of Florida located in Broward County, Florida.
8. WMIF is a Florida corporation doing business in Broward County, Florida.
9. Affinity is a Florida corporation with its principal place of business in Broward County, Florida.
10. The County is a political subdivision of the State of Florida.
11. Comerica has complied with all conditions precedent to the institution of this action, they have occurred, or they have been waived by all of the Defendants.

12. Comerica has retained the law firm of Holland & Knight LLP to represent it in this matter and is obligated to pay its counsel a reasonable fee, which is secured under and pursuant to the lien of the Loan Documents (as defined hereinafter).

COMMON BACKGROUND FACTUAL ALLEGATIONS

13. On January 3, 2008, Comerica agreed to loan Ocean 4660 a principal sum of Ten Million Eight Hundred Fifty Thousand and No/Dollars (\$10,850,000.00) (the "First Loan"). As evidence of the First Loan, Ocean 4660 executed and delivered to Comerica an Installment Note ("First Note"). A true and correct copy of the First Note is attached hereto and incorporated as **Exhibit "A."**

14. On January 3, 2008, Comerica also agreed to loan Ocean 4660 a principal sum of One Million and No/Dollars (\$1,000,000.00) (the "Second Loan") (collectively with the First Loan, the "Loans"). As evidence of the Second Loan, Ocean 4660 executed and delivered to Comerica a Draw-To Note ("Second Note") (collectively with the First Note, the "Notes"). A true and correct copy of the Second Note is attached hereto and incorporated as **Exhibit "B."**

15. On January 25, 2008, Ocean 4660 and Comerica entered into an ISDA Master Agreement, as confirmed by a written Confirmation Letter dated January 25, 2008 (collectively, the "Swap Agreement"), whereby each party agreed to enter into a series of transactions resulting in certain payments between the parties, as set forth in more detail in the Schedule contained therein. A true and correct copy of the Swap Agreement is attached hereto as **Composite Exhibit "C."**

16. On January 3, 2008, to secure repayment of the Notes, Ocean 4660 executed and delivered to Comerica a Continuing Collateral Mortgage ("Mortgage"). The Mortgage was recorded on January 7, 2008 in Official Records Book 44971 at Page 797 of the Public Records of Broward County, Florida. A true and correct copy of the Mortgage is attached hereto and incorporated as **Exhibit "D."**

17. The Mortgage grants Comerica a lien on real property located in Broward County, Florida (hereinafter the "Subject Real Property"), as more fully described below and in Exhibit A of the Mortgage. *See* Ex. D at 1.

18. The Mortgage also grants Comerica a security interest in all personal property, as more fully described below, located in or used or procured for use in connection with the Subject Real Property, at the time the Mortgage was executed or thereafter. *See* Ex. D at 1–2.

19. Pursuant to the Mortgage, Ocean 4660 absolutely and unconditionally mortgaged, warranted, and assigned to Comerica all of Ocean 4660's right, title and interest existing at the time the Mortgage was executed and thereafter arising in and to the rents, issues, profits, revenues, accounts and general intangibles arising from the Subject Real Property or relating to any business conducted by Ocean 4660 thereon under present or future leases, licenses or otherwise. Ex. D at 1.

20. On January 3, 2008, Ocean 4660 executed and delivered to Comerica a Security Agreement (the "Security Agreement"), whereby Ocean 4660 pledged, assigned and granted to Comerica a continuing security interest and lien in certain

personal property, as more fully described therein. A true and correct copy of the Security Agreement is attached hereto and incorporated as **Exhibit “E.”**

21. To further perfect the respective security interests granted by the Mortgage and by the Security Agreement in the personal property described in each document and in the UCC-1 (as hereinafter defined) (collectively, the “Subject Personal Property”), Ocean 4660 delivered to Comerica a Uniform Commercial Code Financing Statement (the “UCC-1”).

22. The UCC-1 was filed with the Florida Secretary of State under File Number 20080735983X on January 4, 2008. A true and complete copy of the UCC-1 is attached hereto and incorporated as **Exhibit “F.”**

23. Comerica is the owner and holder of the original Notes, Mortgage, Swap Agreement, Security Agreement, UCC-1, and all other documents evidencing and/or securing the Loans (hereinafter collectively referred to as the “Loan Documents”).

24. On June 9, 2010, Ocean 4660 and Comerica entered into a Forbearance Agreement, as amended on September 3, 2010 and again on May 5, 2011 (collectively, the “Forbearance Agreement”). A true and correct copy of the Forbearance Agreement is attached hereto and incorporated as **Composite Exhibit “G.”**

25. The Loans are in default for, among other things:

a) failure to pay Comerica the sum of \$78,229.44 for reimbursement of the protective advance Comerica made for 2009 and 2010 real property taxes, which payment was due by July 31, 2011;

b) failure to provide Comerica by May 31, 2011 evidence that the conditions of Section 13 of the Forbearance Agreement (regarding discharge of certain liens) had been met;

c) failure to deliver to Comerica by May 31, 2011 an executed Non-Disturbance and Attornment Agreement and Landlord's Consent, as required by Section 19 of the Forbearance Agreement;

d) failure to pledge to Comerica a first priority security interest in the Bank of America Accounts (as defined in the Forbearance Agreement) by May 16, 2011;

e) failure to deliver to Comerica by May 16, 2011 a fully executed personal financial statement for guarantor Remo Polselli, as required by Section 30 of the Forbearance Agreement;

f) failure to cause all liens, notices of pendency, notices of lis pendens and any other documents recorded in the real property records against the Subject Real Property by Oceanside Lauderdale, Frank, Dipilato, or any other party related to them to be discharged by July 31, 2011 as required by Section 13 of the Forbearance Agreement; and

g) failure to pay the amounts owed under the Swap Agreement when it matured on February 1, 2011.

26. Pursuant to a delinquency notice dated October 26, 2011, Comerica notified Ocean 4660 that the Loans were in default. Comerica further notified Ocean 4660 that commencement of foreclosure and legal proceedings was imminent. A true and complete copy of the delinquency notice is attached hereto and incorporated as **Exhibit "H."**

27. Ocean 4660 failed to cure the defaults.

28. Additionally, Ocean 4660 has failed to maintain real property insurance coverage for the Subject Real Property.

29. Comerica hereby declares the entire outstanding balances of the Notes immediately due and payable, together with title search expenses for ascertaining necessary parties to this action, advances for taxes, insurance, protection of the Subject Real and Personal Property, the costs of this action and attorneys' fees.

30. As of November 7, 2011, after giving Ocean 4660 credit for all sums which have been paid, a principal sum of \$10,651,445.32 (exclusive of accrued and unpaid interest and fees, attorneys' fees, and costs) remains due pursuant to the First Note; a principal sum of \$933,449.13 (exclusive of accrued and unpaid interest and fees, attorneys' fees, and costs) remains due pursuant to the Second Note; and a sum of \$101,844.60 remains due pursuant to the Swap Agreement.

31. In addition, Comerica has incurred investigatory, title search and UCC search expenses to ascertain the necessary parties to this action, which expenses are secured by the lien of the Loan Documents.

32. Comerica has already advanced funds to pay the 2008, 2009 and 2010 real estate taxes, and may be required to advance funds during the pendency of this action to preserve and protect its collateral. All such advances are secured by the lien of the Loan Documents.

33. The Subject Real and Personal Property encumbered by the Mortgage is currently owned by and in the possession of Ocean 4660. The current legal description of the Subject Real Property is:

Land situated in the County of Broward, State of Florida, described as follows:

PARCEL A

Lots 11, 12, 13, 14, 15, 16, 17, 18, and 19, in Block 10, and Lots 14, 15, 16 and 17, in Block 9 of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2 of the Public Records of Broward County, Florida; ALSO, all of that parcel of land, if any, bounded on the West by the easterly line of said Lots 14, 15, 16 and 17, of said Block 9, bounded on the East by the Atlantic Ocean, bounded on the North by the north line of Lot 17 of said Block 9, bounded on the South by the south line of Lot 14 of said Block 9, extended easterly to the Atlantic Ocean, said land fronting on the Atlantic Ocean.

Land situated in the County of Broward, State of Florida, described as follows:

PARCEL B

Lots 20 and 21, in Block 10 of LAUDERDALE BY THE SEA, ACCORDING TO THE Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida.

PARCEL C

Lots 9, 10, 22, 23, and 24, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2 of the Public Records of Broward County, Florida.

Tax Identification No.s	19318-01-06100 and 19318-01-07000 (Parcel A)
	19381-01-07300 (Parcel B)
	19318-01-06800 and 19318-01-06820 (Parcel C)

Commonly known as 4660 N. Ocean Drive, Lauderdale by the Sea, Florida

The current legal description of the Subject Personal Property is:

Together with (a) all related easements, hereditaments, appurtenances, rights, licenses and privileges; (b) all buildings and improvements situated under, upon or over any of the above described land; (c) all the rents, issues, profits, revenues, accounts and general intangibles arising from the above described land, or relating to any business conducted by the Mortgagor on it, under present or future leases, licenses or otherwise; (d) all machinery, equipment, goods, fixtures, and articles of personal property of every kind and nature (other than Household Goods, as defined by 12 CFR 227.12, as amended from time to time, and other than consumer goods, as defined in the Uniform Commercial Code, unless such goods were purchased with the proceeds of any loan specifically referenced as being secured by the Mortgage), now or later located upon the above described land and useable in connection with any present or future operation on the land including, without limit, all lighting, heating, cooling, ventilating, air-conditioning, incinerating, refrigerating, plumbing, sprinkling, communication and electrical systems, and all general intangibles, including without limit software, acquired or used in connection therewith, (e) all "as-extracted collateral", and (f) all awards or payments, and interest on them, made with respect to the premises as a result of (i) any eminent domain proceeding, (ii) any street grade alteration, (iii) any loss of or damage to any building or other improvement, (iv) any other injury to or decrease in the value of the premises, (v) any refund due on account of the payment of real estate taxes, assessments or other charges levied against the premises or (vi) any refund of utility deposits or right to any tenant deposit.

34. Ocean 4660 now owns, holds, and may claim some interest in the Property that is the subject of this foreclosure action by virtue of the deed dated January 3, 2008 and recorded on January 7, 2008 in Official Records Book 44971 at Page 759; the deed dated January 3, 2008 and recorded on January 7, 2008 in Official Records Book 44971 at Page 757; and Assignment of Leasehold Interest dated January 3, 2008 and recorded on January 7, 2008 in Official Records Book 44971 at Page 761 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

35. Oceanside Lauderdale now owns, holds, and may claim some interest in the Property that is the subject of this foreclosure action as a party in possession

of the Subject Real Property, and by virtue of the Lis Pendens recorded on October 28, 2011 in Official Records Book 48272 at Page 1346; the Notice of Pendency recorded on January 11, 2010 in Official Records Book 46790 at Page 604; the Notice of Pendency recorded on May 25, 2010 in Official Records Book 47106 at Page 1585; the Notice of Mechanics Lien recorded November 4, 2010 in Official Records Book 47501 at Page 1818; the Notice of Mechanics Lien recorded January 21, 2011 in Official Records Book 47664, Page 42; and the Notice of Claim of Lien recorded August 16, 2011 in Official Records Book 48116 at Page 1756 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

36. Frank now owns, holds and may claim some interest in the Property that is the subject of this foreclosure action by virtue of the Lis Pendens recorded on October 28, 2011 in Official Records Book 48272 at Page 1346; the Notice of Pendency recorded on January 11, 2010 in Official Records Book 46790 at Page 604; the Notice of Pendency recorded on May 25, 2010 in Official Records Book 47106 at Page 1585; the Notice of Mechanics Lien recorded on November 4, 2010 in Official Records Book 47501 at Page 1818; and the Notice of Mechanics Lien recorded January 21, 2011 in Official Records Book 47664 at Page 42 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

37. Dipilato now owns, holds and may claim some interest in the Property that is the subject of this foreclosure action as a party in possession of the Subject Real Property, and by virtue of the Lis Pendens recorded on October 28, 2011 in Official Records Book 48272 at Page 1346; the Notice of Pendency recorded on May

25, 2010 in Official Records Book 47106 at Page 1585; the Notice of Mechanics Lien recorded on November 4, 2010 in Official Records Book 47501 at Page 1818; the Notice of Pendency recorded on January 18, 2011 in Official Records Book 47653 at Page 1590 and re-recorded January 21, 2011 in Official Records Book 47663 at Page 1853; and the Notice of Mechanics Lien recorded on January 21, 2011 in Official Records Book 47664 at Page 42 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

38. The Town now owns, holds and may claim some interest in the Property that is the subject of this foreclosure action by virtue of the Claim of Liens dated November 10, 2010 and recorded on November 15, 2010 in Official Records Book 47521 at Page 1395 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

39. WMIF now owns, holds and may claim some interest in the Property that is the subject of this foreclosure action by virtue of the Default Final Judgment dated December 8, 2010 and recorded on December 29, 2010 in Official Records Book 47618 at Page 75, and re-recorded on June 15, 2011 in Official Records Book 47977 at Page 298 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

40. Affinity now owns, holds and may claim some interest in the Property that is the subject of this foreclosure action by virtue of the Claim of Lien dated January 13, 2011 and recorded on January 18, 2011 in Official Records Book 47655

at Page 1644 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

41. The County may claim an interest in the Property that is the subject of this foreclosure action by virtue of the Broward County Tourist Development Tax Warrant Lien recorded on April 14, 2009 in Official Records Book 46134 at Page 1028 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

42. The interests of the defendants in the Subject Real and Personal Property are junior and inferior to the interests of Comerica therein.

COUNT I

ACTION TO FORECLOSE MORTGAGE ON REAL PROPERTY SECURING NOTES

43. This is a suit to foreclose the Mortgage, which encumbers the Subject Real Property. Comerica adopts and realleges the averments of paragraphs 1 through 42 above and incorporates those paragraphs as its paragraph 43.

WHEREFORE, Comerica respectfully requests that:

(1) The Court will assume jurisdiction of the subject matter of this action and of the named parties.

(2) The Court will ascertain the amount of money due Comerica for principal and interest on the Notes and the Swap Agreement and for late charges, abstracting, taxes, expenses and all expenses of foreclosure, including attorneys' fees, that Comerica is entitled to recover in this action, plus interest thereon.

(3) The Court decree that Comerica has a lien on the Subject Real Property described in the Mortgage for the sum of money found to be due Comerica.

(4) If the sums due Comerica under the Notes, the Swap Agreement and Mortgage are not paid immediately, the Court shall foreclose the Mortgage in accordance with the rules and established practice of the Court, and the Clerk of the Court shall sell all of the above-mentioned Subject Real Property securing the indebtedness to satisfy the mortgage lien of Comerica in accordance with the provisions of section 45.031, Florida Statutes.

(5) The Court decree that the mortgage lien interests of Comerica are superior and paramount to all liens, rights, title and interest of any defendant, or any party claiming by, through, under or against any defendant, and that such liens, rights, title or interest of any defendant named herein or hereafter made a defendant or any party claiming by, through, under or against any defendant be forever barred and foreclosed.

(6) The Court retain jurisdiction of this action to make any and all further orders and judgments as may be necessary and proper.

(7) The Court grant such other and further relief as Comerica may be entitled to receive.

COUNT II

ACTION TO FORECLOSE MORTGAGE ON PERSONAL PROPERTY SECURED BY THE NOTES

44. This is a suit to foreclose the Mortgage, which encumbers the Subject Personal Property. Comerica adopts and realleges the averments of paragraphs 1 through 42 above and incorporates those paragraphs as its paragraph 44.

WHEREFORE, Comerica requests that:

(1) The Court will assume jurisdiction of the subject matter of this action and of the named parties.

(2) The Court will ascertain the amount of money due Comerica for principal and interest on the Notes and the Swap Agreement and for late charges, abstracting, taxes, expenses and all expenses of foreclosure, including attorneys' fees, that Comerica is entitled to recover in this action, plus interest thereon.

(3) The Court decree that Comerica has a lien on the Subject Personal Property for the sum of money found to be due Comerica that is superior to the interest of any defendant.

(4) If the sums due Comerica under the Notes, the Swap Agreement and Mortgage are not paid immediately, the Court shall foreclose the Mortgage in accordance with the rules and established practice of the Court, and the Clerk of the Court shall sell all of the above-mentioned Subject Personal Property securing the indebtedness to satisfy the mortgage lien of Comerica.

(5) The Court decree that the mortgage lien interests of Comerica are superior and paramount to all liens, rights, title and interest of any defendant, or

any party claiming by, through, under or against any defendant, and that such liens, rights, title or interest of any defendant named herein or hereafter made a defendant or any party claiming by, through, under or against any defendant be forever barred and foreclosed.

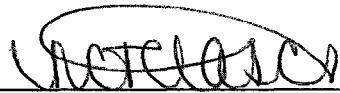
(6) The Court retain jurisdiction of this action to make any and all further orders and judgments as may be necessary and proper.

(7) The Court grant such other and further relief as Comerica may be entitled to receive.

Dated: November 17, 2011

HOLLAND & KNIGHT LLP
Attorneys for Comerica Bank
515 East Las Olas Boulevard, 12th Floor
Fort Lauderdale, FL 33302-4070
Tel: (954) 525-1000
Fax: (954) 463-2030

By: _____



Brian K. Hole
Florida Bar No. 0019968
Nicole C. Velasco
Florida Bar No. 0028585



Installment Note

AMOUNT	NOTE DATE	MATURITY DATE
\$10,850,000	January 3, 2008	February 1, 2011

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of COMERICA BANK ("Bank"), at any office of the Bank in the State of Michigan, the principal sum of TEN MILLION EIGHT HUNDRED FIFTY DOLLARS (\$10,850,000), payable in monthly installments equal to Ninety Seven Thousand Five Hundred Twenty Five Dollars (\$97,525) each, **INCLUSIVE OF** interest, commencing on March 1, 2008, and on each succeeding Installment Payment Date thereafter, until the Maturity Date set forth above, when the entire unpaid balance of principal, interest and all other sums hereunder shall be due and payable in full (unless sooner accelerated in accordance with the terms of this Note).

Subject to the terms and conditions of this Note, the unpaid principal balance outstanding under this Note from time to time shall bear interest at the LIBOR-based Rate or the Prime-based Rate, as elected by the undersigned or as otherwise determined under and in accordance with the terms and conditions of this Note.

Interest accruing hereunder at the Prime-based Rate shall be computed on the basis of a 360 day year and shall be assessed for the actual number of days elapsed, and in such computation, effect shall be given to any change in the Applicable Interest Rate as a result of any change in the Prime-based Rate on the date of each such change in the Prime-based Rate. Interest accruing at the LIBOR-based Rate shall be computed on the basis of a 360 day year and shall be assessed for the actual number of days elapsed from the first day of the Interest Period applicable thereto, but not including the last day thereof.

Accrued and unpaid interest hereunder shall be payable, in arrears, on each Installment Payment Date, including, without limitation, the Maturity Date (unless sooner accelerated in accordance with the terms of this Note).

Payments under this Note shall be first applied to accrued and unpaid interest hereunder and the balance, if any, to principal.

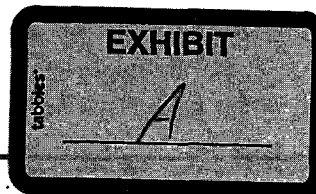
In the event the periodic installments set forth above are inclusive of interest, the undersigned hereby acknowledge(s) and agree(s) that such installments are based upon the original principal amount of Indebtedness outstanding under this Note, an assumed fixed rate of interest, and an assumed amortization term, notwithstanding the fact that the Applicable Interest Rate may change from time to time during the term of this Note. Therefore, in the event that the Applicable Interest Rate changes at any time as a result of any change(s) in the LIBOR-based Rate and/or the Prime-based Rate, Bank may, in its sole discretion, recalculate the installments of principal and interest required to be made by the undersigned under and pursuant to the terms of this Note, and the undersigned agree(s) to pay such installments as they may be recalculated by Bank, and the undersigned acknowledge(s) and agree(s) that any such recalculation shall not affect the Maturity Date of this Note or any other terms or provisions herein set forth.

From and after the occurrence of any Default hereunder, and so long as any such Default remains unremedied or uncured thereafter, the Indebtedness outstanding under this Note shall bear interest at a per annum rate of three percent (3%) above the otherwise Applicable Interest Rate, which interest shall be payable upon demand. In addition to the foregoing, a late payment charge equal to five percent (5%) of each late payment hereunder may be charged on any payment not received by Bank within ten (10) calendar days after the payment due date therefor, but acceptance of payment of any such charge shall not constitute a waiver of any Default under this Note.

In no event shall the interest payable under this Note at any time exceed the maximum rate permitted by law.

The amount from time to time outstanding under this Note, the Applicable Interest Rate, the Interest Period, if applicable, and the amount and date of any repayment shall be noted on Bank's records, which records shall be conclusive evidence thereof, absent manifest error: provided, however, any failure by Bank to make any such notation, or any error in any such notation, shall not relieve the undersigned of its/their obligations to repay Bank all amounts payable by the undersigned to Bank under or pursuant to this Note, when due in accordance with the terms hereof.

The undersigned may elect the LIBOR-based Rate as the Applicable Interest Rate for the entire unpaid principal balance outstanding under this Note by delivering to Bank, by 11:00 a.m. (Detroit, Michigan time) on the proposed effective date of such election, a Notice of LIBOR-based Rate executed by the undersigned. Without limiting any other provisions of this



Note, the undersigned's right and ability to elect the LIBOR-based Rate as the Applicable Interest Rate for the principal Indebtedness outstanding hereunder for an applicable Interest Period shall be subject to the following: (a) the principal Indebtedness outstanding under this Note which is to bear interest at the relevant LIBOR-based Rate for the applicable Interest Period must be at least Two Hundred Fifty Thousand Dollars (\$250,000.00) as of the first day of such Interest Period; (b) no Default, or any condition or event which, with the giving of notice or the running of time, or both, would constitute a Default, shall have occurred and be continuing or exist under this Note; (c) except in the case of the election by the undersigned of the LIBOR-based Rate as the initial Applicable Interest Rate under this Note, in which case, such election shall be effective as of the date of this Note, as set forth above, any such election shall only be effective as of an Installment Payment Date; (d) the undersigned shall elect Interest Periods hereunder so as to permit the undersigned to make the mandatory installment payments required under the terms of this Note, when due in accordance with the terms hereof, without prepaying any Indebtedness hereunder which is then bearing interest at the LIBOR-based Rate prior to the end of the Interest Period applicable thereto; and (e) any such election by the undersigned of the LIBOR-based Rate as the Applicable Interest Rate hereunder shall not be revocable by the undersigned.

The undersigned may, in its/their discretion, request the LIBOR-based Rate as the Applicable Interest Rate for the Indebtedness under this Note for an applicable Interest Period by telephonic notice to Bank. Any such request by telephonic notice shall be confirmed by the undersigned that same day by submission to Bank, either by first class mail, facsimile or other means of delivery acceptable to Bank, of the written Notice of LIBOR-based Rate aforementioned. The undersigned acknowledge(s) that any telephonic request hereunder shall be for the undersigned's convenience and all risks involved in the use of such procedure shall be borne by the undersigned, and the undersigned expressly agree(s) to indemnify and hold Bank harmless therefor. Bank shall have no duty to confirm the authority of anyone requesting the LIBOR-based Rate as the Applicable Interest Rate hereunder by telephone.

In the event that the LIBOR-based Rate is at any time the Applicable Interest Rate for the principal Indebtedness outstanding under this Note, effective as of the last day of the Interest Period applicable to such LIBOR-based Rate and as of the last day of each succeeding Interest Period, the LIBOR-based Rate shall continue to be the Applicable Interest Rate for and in respect of the unpaid principal indebtedness from time to time outstanding under this Note for successive Interest Periods of one (1) month, unless and until the Bank receives express written notice to the contrary from the undersigned, or unless the undersigned is/are not entitled to elect the LIBOR-based Rate as the Applicable Interest Rate for the principal Indebtedness outstanding hereunder in accordance with the terms of this Note or the LIBOR-based Rate is not otherwise available to the undersigned as the Applicable Interest Rate hereunder for the principal Indebtedness outstanding hereunder in accordance with the terms of this Note, in which case, the Prime-based Rate shall be the Applicable Interest Rate hereunder in respect of such Indebtedness for such period, subject in all respects to the terms and conditions of this Note.

Subject to the definition of an "Interest Period" hereunder, in the event that any payment under this Note becomes due and payable on any day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day, and, to the extent applicable, interest shall continue to accrue and be payable thereon during such extension at the rate(s) set forth in this Note.

All payments to be made by the undersigned to Bank under or pursuant to this Note shall be in immediately available funds, without setoff or counterclaim, and in the event that any payments submitted hereunder are in funds not available until collected, said payments shall continue to bear interest until collected. The undersigned hereby authorize(s) Bank to charge any account(s) of the undersigned (or any of them) with Bank for all sums due hereunder when due in accordance with the terms hereof.

In the event that the LIBOR-based Rate is the Applicable Interest Rate for any of the principal Indebtedness outstanding under this Note, and any payment or prepayment of any such Indebtedness shall occur on any day other than the last day of the Interest Period then applicable thereto (whether voluntarily, by acceleration, required payment or otherwise), or if the undersigned elect(s) the LIBOR-based Rate as the Applicable Interest Rate for the principal Indebtedness outstanding under this Note in accordance with the terms and conditions hereof, and, subsequent to such election, but prior to the commencement of the Interest Period applicable thereto, the undersigned (or any of them) revoke(s) such election for any reason whatsoever, or if the Applicable Interest Rate in respect of any Indebtedness hereunder shall be changed, for any reason whatsoever, from the LIBOR-based Rate to the Prime-based Rate prior to the last day of the Interest Period applicable thereto, or if the undersigned shall fail to make any payment of principal or interest hereunder at any time that the LIBOR-based Rate is the Applicable Interest Rate hereunder in respect of such Indebtedness, the undersigned shall reimburse Bank, on demand, for any resulting loss, cost or expense incurred by Bank as a result thereof, including, without limitation, any such loss, cost or expense incurred in obtaining, liquidating, employing or redeploying deposits from third parties. Such amount payable by the undersigned to Bank may include, without limitation, an amount equal to the

excess, if any, of (a) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, refunded or converted, for the period from the date of such prepayment or of such failure to borrow, refund or convert, through the last day of the relevant Interest Period, at the applicable rate of interest for such Indebtedness, as provided under this Note, over (b) the amount of interest (as reasonably determined by Bank) which would have accrued to Bank on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. Calculation of any amounts payable to Bank under this paragraph shall be made as though Bank shall have actually funded or committed to fund the relevant Indebtedness hereunder through the purchase of an underlying deposit in an amount equal to the amount of such Indebtedness and having a maturity comparable to the relevant Interest Period; provided, however, that Bank may fund the Indebtedness hereunder in any manner it deems fit and the foregoing assumptions shall be utilized only for the purpose of the calculation of amounts payable under this paragraph. Upon the written request of the undersigned, Bank shall deliver to the undersigned a certificate setting forth the basis for determining such losses, costs and expenses, which certificate shall be conclusively presumed correct, absent manifest error. Any prepayment hereunder shall also be accompanied by the payment of all accrued and unpaid interest on the amount so prepaid. Any Indebtedness outstanding hereunder which is bearing interest at such time at the Prime-based Rate may be prepaid without penalty or premium. Any prepayment hereunder shall also be accompanied by the payment of all accrued and unpaid interest on the amount so prepaid. Partial prepayments hereunder shall be applied to the installments hereunder in the inverse order of their maturities.

For any Interest Period for which the Applicable Interest Rate is the LIBOR-based Rate, if Bank shall designate a LIBOR Lending Office which maintains books separate from those of the rest of Bank, Bank shall have the option of maintaining and carrying this Note, and the relevant Indebtedness hereunder, on the books of such LIBOR Lending Office.

If, with respect to any Interest Period, Bank determines that, (a) Bank is unable to determine or ascertain the LIBOR Rate for such Interest Period, or (b) by reason of circumstances affecting the foreign exchange and interbank markets generally, deposits in eurodollars in the applicable amounts or for the relative maturities are not being offered to Bank for such Interest Period, or (c) the LIBOR-based Rate will not accurately or fairly cover or reflect the cost to Bank of maintaining any of the Indebtedness under this Note at the LIBOR-based Rate for such Interest Period, then Bank shall forthwith give notice thereof to the undersigned. Thereafter, until Bank notifies the undersigned that such conditions or circumstances no longer exist, any obligation of Bank to maintain any of the Indebtedness outstanding under this Note at the LIBOR-based Rate, and the right of the undersigned to elect the LIBOR-based Rate as the Applicable Interest Rate for any of the Indebtedness under this Note, shall be suspended, and the Prime-based Rate shall be the Applicable Interest Rate for all Indebtedness hereunder during such period of time.

If, after the date hereof, the introduction of, or any change in, any applicable law, rule or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof, or compliance by Bank (or its LIBOR Lending Office) with any request or directive (whether or not having the force of law) of any such authority, shall make it unlawful or impossible for the Bank (or its LIBOR Lending Office) to make or maintain any Advance with interest at the LIBOR-based Rate, Bank shall forthwith give notice thereof to the undersigned. Thereafter, (a) until Bank notifies the undersigned that such conditions or circumstances no longer exist, any obligation of Bank to maintain any of the Indebtedness hereunder at the LIBOR-based Rate, and the right of the undersigned to elect the LIBOR-based Rate as the Applicable Interest Rate for the Indebtedness outstanding under this Note, shall be suspended, and the undersigned may select only the Prime-based Rate as the Applicable Interest Rate hereunder, and (b) if Bank may not lawfully continue to maintain the Indebtedness outstanding hereunder to the end of the then current Interest Period applicable thereto, the Prime-based Rate shall be the Applicable Interest Rate for the remainder of such Interest Period with respect to such outstanding Indebtedness.

If the adoption after the date hereof, or any change after the date hereof in, any applicable law, rule or regulation (whether domestic or foreign) of any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Bank (or its LIBOR Lending Office) with any request or directive (whether or not having the force of law) made by any such authority, central bank or comparable agency after the date hereof: (a) shall subject Bank (or its LIBOR Lending Office) to any tax, duty or other charge with respect to this Note or any Indebtedness hereunder, or shall change the basis of taxation of payments to Bank (or its LIBOR Lending Office) of the principal or of interest under this Note or any other amounts due under this Note in respect thereof (except for changes in the rate of tax on the overall net income of Bank or its LIBOR Lending Office imposed by the jurisdiction in which Bank's principal executive office or LIBOR Lending Office is located); or (b) shall impose, modify or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Bank (or its LIBOR Lending Office), or shall impose on Bank (or its LIBOR Lending Office) or the foreign exchange and interbank markets any other condition affecting this Note or the Indebtedness hereunder; and the result of any of the foregoing is to increase the

cost to Bank of maintaining any part of the Indebtedness hereunder or to reduce the amount of any sum received or receivable by Bank under this Note by an amount deemed by the Bank to be material, then the undersigned shall pay to Bank, within fifteen (15) days of the undersigned's receipt of written notice from Bank demanding such compensation, such additional amount or amounts as will compensate Bank for such increased cost or reduction. A certificate of Bank, prepared in good faith and in reasonable detail by Bank and submitted by Bank to the undersigned, setting forth the basis for determining such additional amount or amounts necessary to compensate Bank shall be conclusive and binding for all purposes, absent manifest error.

In the event that any applicable law, treaty, rule or regulation (whether domestic or foreign) now or hereafter in effect and whether or not presently applicable to Bank, or any interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof, or compliance by Bank with any guideline, request or directive of any such authority (whether or not having the force of law), including any risk-based capital guidelines, affects or would affect the amount of capital required or expected to be maintained by Bank (or any corporation controlling Bank), and Bank determines that the amount of such capital is increased by or based upon the existence of any obligations of Bank hereunder or the maintaining of any Indebtedness hereunder, and such increase has the effect of reducing the rate of return on Bank's (or such controlling corporation's) capital as a consequence of such obligations or the maintaining of such Indebtedness hereunder to a level below that which Bank (or such controlling corporation) could have achieved but for such circumstances (taking into consideration its policies with respect to capital adequacy), then the undersigned shall pay to Bank, within fifteen (15) days of the undersigned's receipt of written notice from Bank demanding such compensation, additional amounts as are sufficient to compensate Bank (or such controlling corporation) for any increase in the amount of capital and reduced rate of return which Bank reasonably determines to be allocable to the existence of any obligations of the Bank hereunder or to maintaining any Indebtedness hereunder. A certificate of Bank as to the amount of such compensation, prepared in good faith and in reasonable detail by the Bank and submitted by Bank to the undersigned, shall be conclusive and binding for all purposes absent manifest error.

This Note and any other indebtedness and liabilities of any kind of the undersigned (or any of them) to the Bank, and any and all modifications, renewals or extensions of it, whether joint or several, contingent or absolute, now existing or later arising, and however evidenced and whether incurred voluntarily or involuntarily, known or unknown, or originally payable to the Bank or to a third party and subsequently acquired by Bank including, without limitation, any late charges; loan fees or charges; overdraft indebtedness; costs incurred by Bank in establishing, determining, continuing or defending the validity or priority of any security interest, pledge or other lien or in pursuing any of its rights or remedies under any loan document (or otherwise) or in connection with any proceeding involving the Bank as a result of any financial accommodation to the undersigned (or any of them); and reasonable costs and expenses of attorneys and paralegals, whether inside or outside counsel is used, and whether any suit or other action is instituted, and to court costs if suit or action is instituted, and whether any such fees, costs or expenses are incurred at the trial court level or on appeal, in bankruptcy, in administrative proceedings, in probate proceedings or otherwise (collectively "Indebtedness") are secured by and the Bank is granted a security interest in and lien upon all items deposited in any account of any of the undersigned with the Bank and by all proceeds of these items (cash or otherwise), all account balances of any of the undersigned from time to time with the Bank, by all property of any of the undersigned from time to time in the possession of the Bank and by any other collateral, rights and properties described in each and every deed of trust, mortgage, security agreement, pledge, assignment and other security or collateral agreement which has been, or will at any time(s) later be, executed by any (or all) of the undersigned to or for the benefit of the Bank (collectively "Collateral"). Notwithstanding the above, (i) to the extent that any portion of the Indebtedness is a consumer loan, that portion shall not be secured by any deed of trust or mortgage on or other security interest in any of the undersigned's principal dwelling or in any of the undersigned's real property which is not a purchase money security interest as to that portion, unless expressly provided to the contrary in another place, or (ii) if the undersigned (or any of them) has (have) given or give(s) the Bank a deed of trust or mortgage covering California real property, that deed of trust or mortgage shall not secure this Note or any other indebtedness of the undersigned (or any of them), unless expressly provided to the contrary in another place, or (iii) if the undersigned (or any of them) has (have) given or give(s) the Bank a deed of trust or mortgage covering real property which, under Texas law, constitutes the homestead of such person, that deed of trust or mortgage shall not secure this Note or any other indebtedness of the undersigned (or any of them) unless expressly provided to the contrary in another place.

If (a) the undersigned (or any of them) or any guarantor under a guaranty of all or part of the Indebtedness ("guarantor") (i) fail(s) to pay this Note or any of the Indebtedness when due, by maturity, acceleration or otherwise, or fail(s) to pay any Indebtedness owing on a demand basis upon demand; or (ii) fail(s) to comply with any of the terms or provisions of any agreement between the undersigned (or any of them) or any guarantor and the Bank, and any such failure continues beyond any applicable grace or cure period, if any, expressly provided with respect thereto; or (iii) become(s) insolvent or the subject of a voluntary or involuntary proceeding in bankruptcy, or a reorganization, arrangement or creditor composition proceeding, (if a business entity) cease(s) doing business as a going concern, (if a natural person) die(s) or

become(s) incompetent, (if a partnership) dissolve(s) or any general partner of it dies, becomes incompetent or becomes the subject of a bankruptcy proceeding, or (if a corporation or a limited liability company) is the subject of a dissolution, merger or consolidation; or (b) any warranty or representation made by any of the undersigned or any guarantor in connection with this Note or any of the Indebtedness shall be discovered to be untrue or incomplete; or (c) there is any termination, notice of termination, or breach of any guaranty, pledge, collateral assignment or subordination agreement relating to all or any part of the Indebtedness; or (d) there is any failure by any of the undersigned or any guarantor to pay when due any of its indebtedness (other than to the Bank) or in the observance or performance of any term, covenant or condition in any document evidencing, securing or relating to such indebtedness; or (e) the Bank deems itself insecure (subject to the provisions of Section 1-208 of the Michigan Uniform Commercial Code), believing that the prospect of payment or performance of this Note or any of the Indebtedness is impaired or shall fear deterioration, removal or waste of any of the Collateral; or (f) there is filed or issued a levy or writ of attachment or garnishment or other like judicial process upon the undersigned (or any of them) or any guarantor or any of the Collateral, including, without limit, any accounts of the undersigned (or any of them) or any guarantor with the Bank; then the Bank, upon the occurrence and at any time during the continuance or existence of any of these events (each a "Default"), may, at its option and without prior notice to the undersigned (or any of them), declare any or all of the Indebtedness to be immediately due and payable (notwithstanding any provisions contained in the evidence of it to the contrary), sell or liquidate all or any portion of the Collateral, set off against the Indebtedness any amounts owing by the Bank to the undersigned (or any of them), charge interest at the default rate provided in the document evidencing the relevant Indebtedness and exercise any one or more of the rights and remedies granted to the Bank by any agreement with the undersigned (or any of them) or given to it under applicable law.

All payments under this Note shall be in immediately available United States funds, without setoff or counterclaim.

The undersigned authorize(s) the Bank to charge any account(s) of the undersigned (or any of them) with the Bank for any and all sums due hereunder when due; provided, however, that such authorization shall not affect any of the undersigned's obligation to pay to the Bank all amounts when due, whether or not any such account balances that are maintained by the undersigned with the Bank are insufficient to pay to the Bank any amounts when due, and to the extent that are insufficient to pay to the Bank all such amounts, the undersigned shall remain liable for any deficiencies until paid in full.

If this Note is signed by two or more parties (whether by all as makers or by one or more as an accommodation party or otherwise), the obligations and undertakings under this Note shall be that of all and any two or more jointly and also of each severally. This Note shall bind the undersigned, and the undersigned's respective heirs, personal representatives, successors and assigns.

The undersigned waive(s) presentment, demand, protest, notice of dishonor, notice of demand or intent to demand, notice of acceleration or intent to accelerate, and all other notices, and agree(s) that no extension or indulgence to the undersigned (or any of them) or release, substitution or nonenforcement of any security, or release or substitution of any of the undersigned, any guarantor or any other party, whether with or without notice, shall affect the obligations of any of the undersigned. The undersigned waive(s) all defenses or right to discharge available under Section 3-605 of the Michigan Uniform Commercial Code and waive(s) all other suretyship defenses or right to discharge. The undersigned agree(s) that the Bank has the right to sell, assign, or grant participations or any interest in, any or all of the Indebtedness, and that, in connection with this right, but without limiting its ability to make other disclosures to the full extent allowable, the Bank may disclose all documents and information which the Bank now or later has relating to the undersigned or the Indebtedness. The undersigned agree(s) that the Bank may provide information relating to this Note or relating to the undersigned to the Bank's parent, affiliates, subsidiaries and service providers.

The undersigned agree(s) to reimburse Bank, or any other holder or owner of this Note, for any and all reasonable costs and expenses (including, without limit, court costs, legal expenses and reasonable attorneys' fees, whether inside or outside counsel is used, whether or not suit is instituted, and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in collecting or attempting to collect this Note or the Indebtedness or incurred in any other matter or proceeding relating to this Note or the Indebtedness.

The undersigned acknowledge(s) and agree(s) that there are no contrary agreements, oral or written, establishing a term of this Note and agree(s) that the terms and conditions of this Note may not be amended, waived or modified except in a writing signed by an officer of the Bank expressly stating that the writing constitutes an amendment, waiver or modification of the terms of this Note. As used in this Note, the word "undersigned" means, individually and collectively, each maker, accommodation party, endorser and other party signing this Note in a similar capacity. If any provision of this Note is unenforceable in whole or part for any reason, the remaining provisions shall continue to be effective. **THIS NOTE IS**

MADE IN THE STATE OF MICHIGAN AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF MICHIGAN, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

For the purposes of this Note, the following terms have the following meanings:

"Applicable Interest Rate" means either the LIBOR-based Rate or the Prime-based Rate, as selected by the undersigned from time to time or as otherwise determined in accordance with the terms and conditions of this Note.

"Business Day" means any day, other than a Saturday, Sunday or any other day designated as a holiday under Federal or applicable State statute or regulation, on which Bank is open for all or substantially all of its domestic and international business (including dealings in foreign exchange) in Detroit, Michigan, and, in respect of notices and determinations relating to the LIBOR-based Rate and Interest Periods, also a day on which dealings in dollar deposits are also carried on in the London interbank market and on which banks are open for business in London, England.

"Installment Payment Date" means March 1, 2008, and the first Business Day of each succeeding month thereafter, until (and including) the Maturity Date.

"Interest Period" means a period of time not to exceed one (1) month, commencing on the effective date of an election of the LIBOR-based Rate as the Applicable Interest Rate hereunder, or in the case of successive continuations of the LIBOR-based Rate as the Applicable Interest Rate hereunder, as herein provided, on the last day of the preceding Interest Period then ending, provided that:

- (a) any Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day, except that if the next succeeding Business Day falls in another calendar month, the Interest Period shall end on the next preceding Business Day, and when an Interest Period begins on a day which has no numerically corresponding day in the calendar month during which such Interest Period is to end, it shall end on the last Business Day of such calendar month;
- (b) each Interest Period shall commence on and end on an Installment Payment Date under this Note; and
- (c) no Interest Period shall extend beyond the Maturity Date.

"LIBOR-based Rate" means a per annum interest rate which is equal to the sum of two and one half percent (2 ½%), plus the quotient of the following:

- (a) the LIBOR Rate;
divided by
- (b) a percentage (expressed as a decimal) equal to 1.00 minus the maximum rate during such Interest Period at which Bank is required to maintain reserves on "Euro-currency Liabilities" as defined in and pursuant to Regulation D of the Board of Governors of the Federal Reserve System or, if such regulation or definition is modified, and as long as Bank is required to maintain reserves against a category of liabilities which includes eurodollar deposits or includes a category of assets which includes eurodollar loans, the rate at which such reserves are required to be maintained on such category.

"LIBOR Lending Office" means Bank's office located in the Cayman Islands, British West Indies, or such other branch of Bank, domestic or foreign, as it may hereafter designate as its LIBOR Lending Office by notice to the undersigned.

"LIBOR Rate" means, with respect to any Indebtedness outstanding under this Note at the LIBOR-based Rate, the per annum rate of interest determined on the basis of the rate for deposits in United States Dollars for a period equal to the relevant Interest Period for such Indebtedness, commencing on the first day of such Interest Period, appearing on Page BBAM of the Bloomberg Financial Markets Information Service as of 11:00 a.m. (Detroit, Michigan time) (or soon thereafter as practical), two (2) Business Days prior to the first day of such Interest Period. In the event that such rate does not appear on Page BBAM of the Bloomberg Financial Markets Information Service (or otherwise on such Service), the "LIBOR Rate" shall be determined by reference to such other publicly available service for displaying eurodollar rates as may be agreed upon by Bank and Borrower, or, in the absence of such agreement, the "LIBOR Rate" shall, instead, be the per annum rate equal to the average of the rates at which Bank is offered dollar deposits at or about 11:00 a.m. (Detroit, Michigan time) (or soon thereafter as practical), two (2) Business Days prior to the first day of such Interest

Period in the interbank eurodollar market in an amount comparable to the principal amount of the respective LIBOR-based Advance which is to bear interest at such LIBOR-based Rate and for a period equal to the relevant Interest Period.

"Notice of LIBOR-based Rate" shall mean a Notice of LIBOR-based Rate in form similar to that attached to this Note as Exhibit "A" issued and delivered by the undersigned to Bank in accordance with the terms of this Note.

"Prime Rate" shall mean the per annum interest rate established by Bank as its prime rate for its borrowers, as such rate may vary from time to time, which rate is not necessarily the lowest rate on loans made by Bank at any such time.

"Prime-based Rate" shall mean a per annum interest rate which is equal to the greater of (i) the Prime Rate minus one quarter of one percent (¼%); or (ii) the rate of interest equal to the sum of (a) one percent (1%) and (b) the rate of interest equal to the average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers (the "Overnight Rates"), as published by the Federal Reserve Bank of New York, or, if the Overnight Rates are not so published for any day, the average of the quotations for the Overnight Rates received by Bank from three (3) Federal funds brokers of recognized standing selected by Bank, as the same may be changed from time to time.

No delay or failure of Bank in exercising any right, power or privilege hereunder shall affect such right, power or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof, or the exercise of any other power, right or privilege. The rights of Bank under this Agreement are cumulative and not exclusive of any right or remedies which Bank would otherwise have, whether by other instruments or by law.

THE MAXIMUM INTEREST RATE SHALL NOT EXCEED 25% PER ANNUM, OR THE HIGHEST APPLICABLE USURY CEILING, WHICHEVER IS LESS.

THE UNDERSIGNED AND BANK, BY ACCEPTANCE OF THIS NOTE, ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE OR THE INDEBTEDNESS.

THE PROPER FLORIDA DOCUMENTARY STAMP TAX HAS BEEN PAID WITH THE RECORDING OF THE CONTINUING COLLATERAL MORTGAGE SECURING THIS NOTE.

OCEAN 4660, LLC

By: 

SIGNATURE OF HANNA KARCHO-POLSELLI

Its: Managing Member
TITLE (if applicable)

40800 Woodward Avenue
STREET ADDRESS

Bloomfield Hills
CITY

Michigan
STATE

48304
ZIP

For Bank Use Only				CCAR#
LOAN OFFICER INITIALS	LOAN GROUP NAME	OBLIGOR NAME Ocean 4660, LLC		
LOAN OFFICER ID. NO.	LOAN GROUP NO.	OBLIGOR NO.	NOTE NO.	AMOUNT \$10,850,000

This Amendment to Note ("Amendment"), made, delivered and effective on July 10, 2008, by and between Ocean 4660, LLC ("Borrower") and COMERICA BANK ("Bank").

WHEREAS, Borrower and Bank are parties to that certain note in the original principal amount of \$10,850,000 dated January 3, 2008 ("Note"); and

WHEREAS, Bank and Borrower desires to amend the Note as set forth below;

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Amendment, Borrower and Bank agree as follows:

1. All payments of principal and interest shall now be due on the fifth day of each month instead of the first day of each month.
2. Borrower is responsible for all costs incurred by Bank, including without limit reasonable attorney fees, with regard to the preparation and execution of this Amendment.
3. The execution of this Amendment shall not be deemed to be a waiver of any Default or Event of Default.
4. All the terms used in this Amendment which are defined in the Note shall have the same meaning as used in the Note, unless otherwise defined in this Amendment.
5. This Amendment is not an agreement to any further or other amendment of the Note.
6. Borrower expressly acknowledges and agrees that except as expressly amended in this Amendment, the Note, as amended, remains in full force and effect and is ratified, confirmed and restated

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment on the date set forth above.

OCEAN 4660, LLC

By: 

SIGNATURE OF HANNA KARCHO POLSELLI

Its: Managing Member

COMERICA BANK

By: 

SIGNATURE OF MICHAEL D. MALAGA

Its: Vice President



copy

Confirmation

Date: January 25, 2008

To: Ocean 4660, llc
Attention: Hanna Karcho
Phone # 248.645.5400
Fax#: 248.645.5015

From: COMERICA BANK

Subject: Swap Transaction (Ref: SW1558)

The purpose of this communication is to set forth the terms and conditions of the swap transaction entered into on the Trade Date referred to below (the "Swap Transaction"), between **COMERICA BANK** ("Party A") and **OCEAN 4660, LLC** ("Party B"). This communication constitutes a "Confirmation" as referred to in the Swap Agreement specified below.

This confirmation supplements, forms part of, and is subject to, the Master Agreement, dated January 25, 2008, between Party A and Party B (the "Swap Agreement"). All provisions contained in, or incorporated by reference to such Swap Agreement shall govern this Confirmation except as expressly modified below.

Party A and Party B each represent that entering into the Swap Transaction is authorized and does not violate any laws of its jurisdiction of organization or residence or the terms of any agreement to which it is a party, and it has reached its own conclusions about the Swap Transaction, and any legal, regulatory, tax, accounting or economic consequences arising from the Swap Transaction, and has concluded that the Swap Transaction is suitable in light of its own evaluation of the Swap Transaction and its own financial capabilities and sophistication.

This Confirmation incorporates the definitions and provisions contained in the 2000 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc.) (The "Definitions"). In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.



The terms of the particular Swap Transaction to which this Confirmation relates are as follows:

Party A:	COMERICA BANK
Party B:	OCEAN 4660, LLC
Initial Notional Amount:	\$10,850,000.00 USD
Notional Schedule:	See Schedule A – Dates will adjust according to the Modified Following Business Day Convention.
Trade Date:	January 25, 2008
Effective Date:	February 1, 2008
Termination Date:	February 1, 2011 subject to adjustment In accordance with the Modified Following Business Day convention, with respect to a New York and London Banking Day.

FIXED AMOUNTS:

Fixed Rate Payer:	OCEAN 4660, LLC [Party B]
Fixed Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment or Early Payment applies:]	Monthly on the 1st day of each month, commencing March 01, 2008, through and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.
Fixed Rate:	3.40%
Fixed Rate Day Count Fraction:	Actual / 360

FLOATING AMOUNTS:

Floating Rate Payer:	COMERICA BANK [Party A]
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Floating Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment or Early Payment applies]:

Monthly on the 1st day of each month, commencing March 01, 2008, through and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate for initial Period:

TBD

Floating Rate Option:

USD-LIBOR-BBA

Designated Maturity:

One (1) month

Floating Rate Day Count Fraction:

Actual / 360

Reset Dates:

The first day of each Floating Rate Payer Calculation Period

Business Days

New York and London

Calculation Agent:

Comerica Bank

Offices:

Party A is not a Multi branch Party
Party B is not a Multi branch Party

Payment instructions for Party A in:

We will settle amounts to your account
1852-40098-3 with Comerica Bank

Payment instructions for Party B in:

We will settle amounts to your account
1852-40098-3 with Comerica Bank

Schedule A *			
From and Including	To	Monthly Notional Amortization	Outstanding Notional Amount
02/01/08	03/03/08		10,850,000.00
03/03/08	04/01/08	37,627.49	10,812,372.51
04/01/08	05/01/08	37,812.49	10,774,560.03
05/01/08	06/02/08	37,998.40	10,736,561.63
06/02/08	07/01/08	38,185.22	10,698,376.40
07/01/08	08/01/08	38,372.97	10,660,003.44
08/01/08	09/02/08	38,561.64	10,621,441.80
09/02/08	10/01/08	38,751.23	10,582,690.57
10/01/08	11/03/08	38,941.76	10,543,748.81
11/03/08	12/01/08	39,133.22	10,504,615.59
12/01/08	01/02/09	39,325.63	10,465,289.97
01/02/09	02/02/09	39,518.98	10,425,770.99
02/02/09	03/02/09	39,713.28	10,386,057.71
03/02/09	04/01/09	39,908.54	10,346,149.18
04/01/09	05/01/09	40,104.75	10,306,044.42
05/01/09	06/01/09	40,301.93	10,265,742.49
06/01/09	07/01/09	40,500.09	10,225,242.40
07/01/09	08/03/09	40,699.21	10,184,543.19
08/03/09	09/01/09	40,899.32	10,143,643.88
09/01/09	10/01/09	41,100.40	10,102,543.48
10/01/09	11/02/09	41,302.48	10,061,241.00
11/02/09	12/01/09	41,505.55	10,019,735.44
12/01/09	01/04/10	41,709.62	9,978,025.82
01/04/10	02/01/10	41,914.69	9,936,111.13
02/01/10	03/01/10	42,120.77	9,893,990.36
03/01/10	04/01/10	42,327.87	9,851,662.49
04/01/10	05/04/10	42,535.98	9,809,126.51
05/04/10	06/01/10	42,745.11	9,766,381.40
06/01/10	07/01/10	42,955.28	9,723,426.12
07/01/10	08/02/10	43,166.47	9,680,259.65
08/02/10	09/01/10	43,378.71	9,636,880.94
09/01/10	10/01/10	43,591.99	9,593,288.95
10/01/10	11/01/10	43,806.32	9,549,482.64
11/01/10	12/01/10	44,021.70	9,505,460.94
12/01/10	01/04/11	44,238.14	9,461,222.81
01/04/11	02/01/11	44,455.64	9,416,767.17

* Dates will adjust according to the Modified Following Business Day Convention.



Please confirm that the foregoing correctly sets forth the terms of our agreement with respect to the Swap Transaction by signing in the space provided below and sending a copy of the executed Confirmation by fax (248-371-6801).

It has been a pleasure working with you on this transaction and we look forward to working with you again in the future.

COMERICA BANK

By: _____
Name: Greg Yovan
Title: Vice President
Date: January 25, 2008

Confirmed:

OCEAN 4660, LLC

By: _____
Name: Hanna Karcho
Title: Member
Date:

**Draw-To Note**

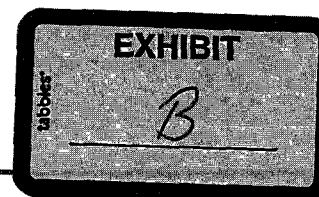
(Variable Rate-Maturity Date-Optional Advances (Business and Commercial Loans Only))

AMOUNT	NOTE DATE	MATURITY DATE	TAX IDENTIFICATION NUMBER
\$1,000,000	January 3, 2008	January 1, 2011	

For value received, the undersigned promise(s) to pay to the order of Comerica Bank ("Bank"), at any office of the Bank in the State of Michigan; One Million Dollars (U.S.) (or that portion of it advanced by the Bank and not repaid as later provided) with interest until maturity, whether by acceleration or otherwise, or until Default, as later defined, at a per annum rate equal to the Bank's prime rate from time to time in effect minus one quarter of one percent (¼%) per annum, and after that at a rate equal to the rate of interest otherwise prevailing under this Note plus three percent (3%) per annum (but in no event in excess of the maximum rate permitted by law). The Bank's "prime rate" is that annual rate of interest so designated by the Bank and which is changed by the Bank from time to time. Interest rate changes will be effective for interest computation purposes as and when the Bank's prime rate changes. Interest shall be calculated on the basis of a 360-day year for actual number of days the principal is outstanding. Accrued interest on this Note shall be payable on the first day of each month commencing February 1, 2008, until the Maturity Date (set forth above) when all amounts outstanding under this Note shall be due and payable in full. If the frequency of interest payments is not otherwise specified, accrued interest on this Note shall be payable monthly on the first day of each month. Beginning April 1, 2009 and on the first day of each month thereafter, the undersigned shall make principal payments each equal to one sixtieth (1/60th) of the principal outstanding under this Note on March 31, 2009, until the Maturity Date, when all amounts outstanding under this Note shall be due and payable. If any payment of principal or interest under this Note shall be payable on a day other than a day on which the Bank is open for business, this payment shall be extended to the next succeeding business day and interest shall be payable at the rate specified in this Note during this extension. Any payment of principal in excess of the installment payments required under this Note need not be accepted by Bank (except as required under applicable law), but if accepted shall apply to the installments last falling due. A late payment charge equal to five percent (5%) of each late payment may be charged on any payment not received by the Bank within ten (10) calendar days after the payment due date, but acceptance of payment of this charge shall not waive any Default under this Note. This is a Note under which advances and repayments but not readvances may be made. No advance shall be made under this Note after March 31, 2009.

The principal amount payable under this Note shall be the sum of all advances made by the Bank to or at the request of the undersigned, less principal payments actually received in cash by the Bank. The books and records of the Bank shall be the best evidence of the principal amount and the unpaid interest amount owing at any time under this Note and shall be conclusive absent manifest error. No interest shall accrue under this Note until the date of the first advance made by the Bank; after that interest on all advances shall accrue and be computed on the principal balance outstanding from time to time under this Note until the same is paid in full. At no time shall the Bank be under any obligation to make any advances to the undersigned pursuant to this Note (notwithstanding anything expressed or implied in this Note or elsewhere to the contrary, including without limit if the Bank supplies the undersigned with a borrowing formula) and the Bank, at any time and from time to time, without notice, and in its sole discretion, may refuse to make advances to the undersigned without incurring any liability due to this refusal and without affecting the undersigned's liability under this Note for any and all amounts advanced.

This Note and any other indebtedness and liabilities of any kind of the undersigned (or any of them) to the Bank, and any and all modifications, renewals or extensions of it, whether joint or several, contingent or absolute, now existing or later arising, and however evidenced (collectively "Indebtedness"), are secured by and the Bank is granted a security interest in all items deposited in any account of any of the undersigned with the Bank and by all proceeds of these items (cash or otherwise), all account balances of any of the undersigned from time to time with the Bank, by all property of any of the undersigned from time to time in the possession of the Bank and by any other collateral, rights and properties described in each and every deed of trust, mortgage, security agreement, pledge, assignment and other security or collateral agreement which has been, or will at any time(s) later be, executed by any (or all) of the undersigned to or for the benefit of the Bank (collectively "Collateral"). Notwithstanding the above, (i) to the extent that any portion of the Indebtedness is a consumer loan, that portion shall not be secured by any deed of trust, mortgage or other security interest in any of the undersigned's principal dwelling or in any of the undersigned's real property which is not a purchase money security interest as to that portion, unless expressly provided to the contrary in another place, or (ii) if the undersigned (or any of them) has(have) given or give(s) Bank a deed of trust or mortgage covering California real property, that deed of trust or mortgage shall not secure this Note or any other indebtedness of the undersigned (or any of them), unless expressly provided to the contrary in another place.



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If the undersigned (or any of them) or any guarantor under a guaranty of all or part of the Indebtedness ("guarantor") (a) fail(s) to pay any of the Indebtedness when due, by maturity, acceleration or otherwise, or fail(s) to pay any Indebtedness owing on a demand basis upon demand; or (b) fail(s) to comply with any of the terms or provisions of any agreement between the undersigned (or any of them) or any such guarantor and the Bank; or (c) become(s) insolvent or the subject of a voluntary or involuntary proceeding in bankruptcy, or a reorganization, arrangement or creditor composition proceeding, (if a business entity) cease(s) doing business as a going concern, (if a natural person) die(s) or become(s) incompetent, (if a partnership) dissolve(s) or any general partner of it dies, becomes incompetent or becomes the subject of a bankruptcy proceeding or (if a corporation or a limited liability company) is the subject of a dissolution, merger or consolidation; or (d) if any warranty or representation made by any of the undersigned or any guarantor in connection with this Note or any of the Indebtedness shall be discovered to be untrue or incomplete; or (e) if there is any termination, notice of termination, or breach of any guaranty, pledge, collateral assignment or subordination agreement relating to all or any part of the Indebtedness; or (f) if there is any failure by any of the undersigned or any guarantor to pay when due any of its indebtedness (other than to the Bank) or in the observance or performance of any term, covenant or condition in any document evidencing, securing or relating to such indebtedness; or (g) if the Bank deems itself insecure (subject to the provisions of Section 1-208 of the Michigan Uniform Commercial Code) believing that the prospect of payment of this Note or any of the Indebtedness is impaired or shall fear deterioration, removal or waste of any of the Collateral; or (h) if there is filed or issued a levy or writ of attachment or garnishment or other like judicial process upon the undersigned (or any of them) or any guarantor or any of the Collateral, including without limit, any accounts of the undersigned (or any of them) or any guarantor with the Bank, then the Bank, upon the occurrence of any of these events (each a "Default"), may at its option and without prior notice to the undersigned (or any of them), declare any or all of the Indebtedness to be immediately due and payable (notwithstanding any provisions contained in the evidence of it to the contrary), sell or liquidate all or any portion of the Collateral, set off against the Indebtedness any amounts owing by the Bank to the undersigned (or any of them), charge interest at the default rate provided in the document evidencing the relevant Indebtedness and exercise any one or more of the rights and remedies granted to the Bank by any agreement with the undersigned (or any of them) or given to it under applicable law. All payments under this Note shall be in immediately available United States funds, without setoff or counterclaim.

If this Note is signed by two or more parties (whether by all as makers or by one or more as an accommodation party or otherwise), the obligations and undertakings under this Note shall be that of all and any two or more jointly and also of each severally. This Note shall bind the undersigned, and the undersigned's respective heirs, personal representatives, successors and assigns. The undersigned waive(s) presentment, demand, protest, notice of dishonor, notice of demand or intent to demand, notice of acceleration or intent to accelerate, and all other notices and agree(s) that no extension or indulgence to the undersigned (or any of them) or release, substitution or nonenforcement of any security, or release or substitution of any of the undersigned, any guarantor or any other party, whether with or without notice, shall affect the obligations of any of the undersigned. The undersigned waive(s) all defenses or right to discharge available under Section 3-605 of the Michigan Uniform Commercial Code and waive(s) all other suretyship defenses or right to discharge. The undersigned agree(s) that the Bank has the right to sell, assign, or grant participations or any interest in, any or all of the Indebtedness, and that, in connection with this right, but without limiting its ability to make other disclosures to the full extent allowable, the Bank may disclose all documents and information which the Bank now or later has relating to the undersigned or the Indebtedness. The undersigned agree(s) that the Bank may provide information relating to this Note or relating to the undersigned to the Bank's parent, affiliates, subsidiaries and service providers.

The undersigned agree(s) to reimburse the holder or owner of this Note upon demand for any and all costs and expenses (including without limit, court costs, legal expenses and reasonable attorney fees, whether inside or outside counsel is used, whether or not suit is instituted and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in collecting or attempting to collect this Note or incurred in any other matter or proceeding relating to this Note.

The undersigned acknowledge(s) and agree(s) that there are no contrary agreements, oral or written, establishing a term of this Note and agree(s) that the terms and conditions of this Note may not be amended, waived or modified except in a writing signed by an officer of the Bank expressly stating that the writing constitutes an amendment, waiver or modification of the terms of this Note. As used in this Note, the word "undersigned" means, individually and collectively, each maker, accommodation party, indorser and other party signing this Note in a similar capacity. If any provision of this Note is unenforceable in whole or part for any reason, the remaining provisions shall continue to be effective. All advances under this Note shall be made from the Bank's principal office located in Detroit, Michigan. **THIS NOTE IS MADE IN THE STATE OF MICHIGAN AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF MICHIGAN, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLE.**

THE MAXIMUM INTEREST RATE SHALL NOT EXCEED 25% PER ANNUM, OR THE HIGHEST APPLICABLE USURY CEILING, WHICHEVER IS LESS.

THE UNDERSIGNED AND THE BANK ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE OR THE INDEBTEDNESS.

OCEAN 4660, LLC

By:  Its: Managing Member
SIGNATURE OF HANNA KARCHOPOLSELL TITLE (if applicable)

By: _____ Its: _____
SIGNATURE OF TITLE (if applicable)

40800 Woodward Avenue
STREET ADDRESS

Bloomfield Hills
CITY

Michigan
STATE

48304
ZIP

For Bank Use Only				CCAR#
LOAN OFFICER INITIALS	LOAN GROUP NAME	OBLIGOR NAME		
LOAN OFFICER ID. NO.	LOAN GROUP NO.	OBLIGOR NO.	NOTE NO.	AMOUNT \$1,000,000

This Amendment to Note ("Amendment"), made, delivered and effective on July 10, 2008, by and between Ocean 4660, LLC ("Borrower") and COMERICA BANK ("Bank").

WHEREAS, Borrower and Bank are parties to that certain note in the original principal amount of \$1,000,000 dated January 3, 2008 ("Note"); and

WHEREAS, Bank and Borrower desires to amend the Note as set forth below;

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Amendment, Borrower and Bank agree as follows:

1. All payments of principal and interest shall now be due on the fifth day of each month instead of the first day of each month.
2. Borrower is responsible for all costs incurred by Bank, including without limit reasonable attorney fees, with regard to the preparation and execution of this Amendment.
3. The execution of this Amendment shall not be deemed to be a waiver of any Default or Event of Default.
4. All the terms used in this Amendment which are defined in the Note shall have the same meaning as used in the Note, unless otherwise defined in this Amendment.
5. This Amendment is not an agreement to any further or other amendment of the Note.
6. Borrower expressly acknowledges and agrees that except as expressly amended in this Amendment, the Note, as amended, remains in full force and effect and is ratified, confirmed and restated.

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment on the date set forth above.

OCEAN 4660, LLC

By: 

SIGNATURE OF HANNA KARCHO POLSELLI

Its: Managing Member

COMERICA BANK

By: 

SIGNATURE OF MICHAEL D. MALAGA

Its: Vice President

EXHIBIT "A"

NOTICE OF LIBOR-BASED RATE

With reference to the \$10,850,000 Installment Note dated as of January 3, 2008, made by the undersigned payable to Comerica Bank ("Bank"), and subject to the terms and conditions of said Note, the undersigned hereby elects the LIBOR-based Rate as the Applicable Interest Rate for the entire unpaid balance of principal indebtedness outstanding under said Note. Such election shall be effective as of _____, _____, and shall end on _____.

In the event that the Indebtedness outstanding under said Installment Note to which this Notice relates is currently bearing interest at the Eurodollar-based Rate, the Interest Period with respect thereto ends on _____, _____.

The undersigned hereby certifies that, as of the date hereof, no Default, or any condition or event which, with the giving of notice or the running of time, or both, would constitute a Default, has occurred and is continuing or exists under said Installment Note.

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in said Installment Note.

Dated this _____ day of _____, _____.

OCEAN 4660, LLC

By: _____

Its: _____

(Multicurrency Cross Border)

ISDA

International Swap Dealers Association, Inc.

MASTER AGREEMENT

dated as of January 25, 2008

COMERICA BANK, a Texas banking association and OCEAN 4660, LLC, a Michigan limited liability company, have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:-

1. Interpretation

(a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.

(c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) General Conditions.

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.



(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:-

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:-

(1) promptly notify the other party ("Y") of such requirement;

(2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

(3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:-

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) *Liability. If:-*

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(1)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) *Default Interest; Other Amounts.* Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:-

(a) *Basic Representations.*

(i) *Status.* It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) *Powers.* It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) *No Violation or Conflict.* Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) *Consents.* All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) *Obligations Binding.* Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:-

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:-

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:-

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified

Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:-

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation merger or transfer:-

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:-

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):-

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) ***Right to Terminate Following Termination Event.***

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) ***Right to Terminate. If:-***

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) ***Calculations.***

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(c) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:-

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) **Second Method and Loss.** If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:-

(1) **One Affected Party.** If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the

Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:-

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:-

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency

payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) **Separate Indemnities.** To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) *No Waiver of Rights.* A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) *Headings.* The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:-

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Addresses.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:-

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:-

"**Additional Termination Event**" has the meaning specified in Section 5(b).

"**Affected Party**" has the meaning specified in Section 5(b).

"**Affected Transactions**" means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"**Affiliate**" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"**Applicable Rate**" means:-

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

"Burdened Party" has the meaning specified in Section 5(b).

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iv).

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Illegality" has the meaning specified in Section 5(b).

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and *"lawful"* and *"unlawful"* will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum, equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

"Non defaulting Party" has the meaning specified in Section 6(a).

"Office" means a branch or office of a party, which may be such party's head or home office.

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Reference Market-makers" means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is

acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Set-off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of:-

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meanings specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other

Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

"Termination Event" means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.


"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

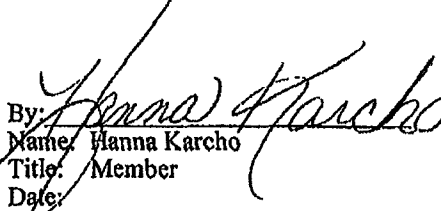
"Unpaid Amounts" owing to any party means with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

COMERICA BANK

OCEAN 4660, LLC

By: 
Name: Greg Yovan
Title: Vice President
Date: January 25, 2008

By: 
Name: Hanna Karcho
Title: Member
Date:

SCHEDULE to the 1992 Master Agreement
(Multicurrency-Cross Border)
Dated as of January 25, 2008

between COMERICA BANK and OCEAN 4660, LLC,
("Party A") ("Party B")

Part 1
Termination Provisions

In this Agreement:

- (a) **"Specified Entity"** means in relation to Party A - NOT APPLICABLE, and in relation to Party B – Affiliates.
- (b) **"Specified Transaction"** will have the meaning specified in Section 14 of this Agreement.
- (c) The **"Cross Default"** provisions of Section 5(a)(vi) will apply not to Party A and will apply to Party B.

"Specified Indebtedness" will have the meaning specified in Section 14 except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business.

"Threshold Amount" means:
 - with respect to Party A - not applicable.
 - with respect to Party B - an amount equal to U.S. \$10,000.
- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(iv) will apply to Party A and to Party B.
- (e) The **"Automatic Early Termination"** provision of Section 6(a) will only apply to Party A and to Party B if the laws of a jurisdiction other than the laws of the United States applies to this Master Agreement, the Credit Support Annex, or the collateral under the Credit Support Annex.
- (f) **Payments on Early Termination** for the purpose of Section 6(e) of this Agreement - Second Method and Market Quotation will apply.
- (g) **"Termination Currency"** means United States Dollars.
- (h) **Additional Termination Event** means in relation to Party A - NOT APPLICABLE, and in relation to Party B – each of the following events: (i) Party A may, at its sole discretion, terminate this Agreement or any Specified Transaction, by giving five (5) days prior written notice to Party B which notice shall specify the Early Termination Date; or (ii) if Party A deems itself insecure, believing in good faith that the prospect of payment under, or performance of, this Agreement or any Specified Transaction is materially impaired or Party A fears deterioration, removal or waste of any of the collateral under any Credit Support Documents, then Party A may, at its sole discretion, provide written notice of termination of this Agreement or any Specified Transaction to Party B which notice shall specify the Early Termination Date. In case of any Additional Termination Event under this Section 1(h), each party will be considered an Affected Party.

- (i) **Section 5(b)(iv)** is hereby deleted in its entirety and replaced by the following:

"Credit Event Upon Merger: If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or all or substantially all its assets and/or voting stock is transferred to or comes under the practical, beneficial, or effective control of, another entity, or reorganizes, incorporates, reincorporates, or reconstitutes into or as, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or resulting entity, or its successor or transferee, as appropriate, will be the Affected Party) (for purposes hereof, if Moody's Investors Service, Inc. ("Moody's") or Standard and Poor's Corporation ("S&P") maintains a long term unsubordinated debt rating of the party, materially weaker means below Baa2 by Moody's and BBB by S&P);" or

- (j) **Section 5(a)(vii)(1)** is hereby amended by inserting after the word "amalgamation" the following words: ", transfer, reorganization, incorporation, reincorporation, reconstitution,".
- (k) **Section 5(a)(viii)** is hereby amended by deleting and replacing, in its entirety, the introductory paragraph by the following:

"The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges into, or all or substantially all its assets and/or voting stock is transferred to or comes under the practical, beneficial, or effective control of, another entity, or reorganizes, incorporates, reincorporates, or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, incorporation, reincorporation, or reconstitution:"

Part 2

Tax Representations

- (a) **Payer Tax Representations.** For the purpose of Section 3(e), each party, for itself represents that it is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e) or 6(d)) to be made by it to the other party under this Agreement.

In making this representation, each Party is relying on:

- (i) the accuracy of any representation made by the other party pursuant to Section 3(f);
- (ii) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or Section 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or Section 4(a)(iii); and
- (iii) the satisfaction of the agreement of the other party contained in Section 4(d),

provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) **Payee Tax Representations.** For the purpose of Section 3(f), Party A represents that it is a banking association organized under the law of the State of Texas.
- (c) **Payee Tax Representations:** For the purpose of Section 3(f), Party B represents that it is a limited liability company organized under the law of the State of Michigan.

Part 3
Agreement to Deliver Documents

For the purpose of Section 4(a):

- (a) Tax forms, documents or certificates to be delivered are: None
- (b) Other documents to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d)
Party A and Party B	Evidence reasonably satisfactory in form and substance to the other party as to the names, true signatures, and authority of its officers and officials signing this Agreement or any Confirmation	Upon execution of this Agreement and, if requested, upon execution of any Confirmation	Yes
Party A and Party B	A copy of the annual report for such party containing audited or certified financial statements for the most recently ended financial year prepared and audited or certified in accordance with accounting principles, standards (if applicable) and practices generally accepted and consistently applied in accordance with the laws of such party's jurisdiction of incorporation or organization together with the related auditor's or accountants' reports and approvals (as the case may be)	As soon as publicly available	Yes

Part 4
Miscellaneous

- (a) **Addresses for Notices.** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A:

Address: Comerica Bank, Oaktec Office Center
3551 Hamlin Road, MC 7272
Auburn Hills, Michigan 48326

Attention: Global Capital Market Operations

Facsimile No. 248 / 371-6797 Telephone No: 248 / 371-6796

Address for notices or communications to Party B:

Address: 30800 Woodward Bloomfield Hills, MI 48301

Authorized
Signer: Hanna Karcho
Phone # 248.645.5400
Fax#: 248.645.5015
Email: hkarcho@yahoo.com

- (b) **Offices.** The provisions of Section 10(a) will apply to this Agreement
- (c) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.
- (d) **Calculation Agent.** The Calculation Agent is Party A.
- (e) **Credit Support Document:** Credit Support Document is not applicable in relation to Party A. Credit Support Document is applicable in relation to Party B and shall mean Letter Agreement dated January 3, 2008, Security Agreement (All Assets) dated January 3, 2008, Continuing Collateral Mortgage dated January 3, 2008, Guaranty by Hanna Karcho-Polselli, Guaranty by Remo Polselli. Additionally, Credit Support Documents includes each agreement and instrument, now or hereafter existing, of any kind or nature which secures, guarantees or otherwise provides direct or indirect assurance of payment or performance of any existing or future obligation of Party B under this Agreement, made by or on behalf of any person or entity (including, without limiting the generality of the foregoing, any credit or loan agreement, note, reimbursement agreement, security agreement, mortgage, pledge agreement, assignment of rents or any other agreement or instrument granting any lien, security interest, assignment, charge or encumbrance to secure any such obligation, any guaranty, suretyship, letter of credit or subordination agreement relating to any such obligation and any other financial support agreement relating to Party B or any Credit Support Provider) in favor of Party A or any of its Affiliates.

Security: Party B agrees that the security interests in collateral granted to Party A under the foregoing Credit Support Documents shall secure the obligations of Party B to Party A under this Agreement. To further secure the obligations of Party B under this Agreement, Party A may at any time without prior notice or demand set off against any credit balance or deposit account maintained with Party A by Party B or any of its Affiliates, all or any part of the Party B's obligations hereunder. Party B hereby grants to Party A a security interest in and lien on any such deposit accounts, credit balance or other money.
- (f) **Credit Support Provider:** Credit Support Provider is not applicable in relation to Party A. Credit Support Provider is applicable in relation to Party B and means Hanna Karcho-Polselli, Remo Polselli and any other person or entity (other than Party B) that now or hereafter secures, guarantees or otherwise provides direct or indirect assurance of payment or performance of any existing or future obligation of Party B under this Agreement or any Credit Support Document.
- (g) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Michigan (without reference to choice of law doctrine).
- (h) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply from the date of this Agreement.
- (i) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.

**Part 5
Other Provisions**

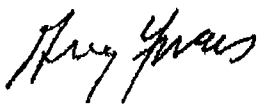
- (a) **ISDA Definitions.** The 2000 ISDA Definitions (the "2000 Definitions"), as published by the International Swaps and Derivatives Association, Inc. ("ISDA"), and the 1998 FX and Currency Option Definitions (the "FX Definitions" and together with the 2000 Definitions, the "Definitions"), as published by ISDA, Emerging Markets Traders Association and The Foreign Exchange Committee, each as hereinafter amended, are incorporated by reference into this Agreement as if fully set forth herein; provided, however, unless otherwise agreed in writing by the parties, the FX Definitions shall apply only with respect to FX Transactions and Currency Option Transactions.
- (b) **Inconsistency.** Unless expressly provided otherwise, in the event of any inconsistency between any of the documents listed below, the document listed first will prevail: (i) the Confirmation; (ii) the Schedule; (iii) the printed form of ISDA Master Agreement; and (iv) the Definitions (including: (1) the FX Definitions, as applicable, and (2) the 2000 Definitions).
- (c) **Representations.** The following is added as a new Section 3(a)(vi):
- "(vi) Independence.** For any Relevant Agreement (defined below): (i) it acts as principal and not as agent, (ii) it acknowledges that the other party acts only at arm's length and is not its agent, broker, advisor or fiduciary in any respect, and any agency, brokerage, advisory or fiduciary services that the other party (or any of its affiliates) may otherwise provide to the party (or to any of its affiliates) excludes the Relevant Agreement, (iii) it is relying solely upon its own evaluation of the Relevant Agreement (including the present and future results, consequences, risks, and benefits thereof, whether financial, accounting, tax, legal or otherwise) and upon advice from its own professional advisors, (iv) it understands the Relevant Agreement and those risks, has determined they are appropriate for it, and willingly assumes those risks, and (v) it has not relied and will not be relying upon any evaluation or advice (including any recommendation, opinion, or representation) from the other party, its affiliates or the representatives or advisors of the other party or its affiliates (except representations expressly made in the Relevant Agreement or an opinion of counsel required thereunder).
- "Relevant Agreement" means this Agreement, each Transaction, each Confirmation, any Credit Support Document, and any agreement (including any amendment, modification, transfer or early termination) between the parties relating thereto or to any Transaction."
- (d) **Additional Agreements.** Each of Party A and Party B, if applicable, hereby further covenants and agrees that at all times during the term of this Agreement it will continuously include and maintain as part of the official written books and records this Agreement, this Schedule and all other exhibits, supplements, and attachments hereto and documents incorporated by reference herein, all Confirmations and evidence of all necessary approvals. In addition to any other remedies which the other party may have under this Agreement or otherwise, if it breaches or defaults on any of its obligations set forth in this subparagraph (d), the other party shall be entitled to apply to any court of competent jurisdiction for an order requiring specific performance of such obligations, and the defaulting party shall not contest any such application and shall comply with any such order.

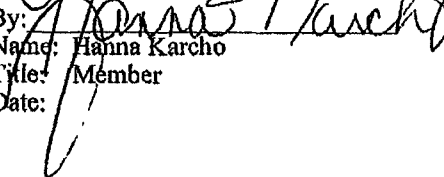
- (e) **Set-off.** Any Amount (the "Early Termination Amount") payable to one party (the Payee) by the other party (the Payer) under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(iv) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and the Payer or instrument(s) or undertaking(s) issued or executed by one party to, or in favor of, the other party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this paragraph. For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. Nothing in this paragraph shall be effective to create a charge or other security interest. This paragraph shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).
- (f) **Local Business Day.** Instead of the meaning specified in Section 14, "Local Business Day" means a day on which Party A and commercial banks are open for business in the City of Detroit, Michigan.
- (g) **Jurisdiction.** Section 13(b)(i) shall be deleted and replaced with the following:
- "(i) submits to the non-exclusive jurisdiction of the courts of the State of Michigan and the United States District Court located in the City of Detroit, Michigan; and"
- (h) **Transfers.** The parties agree that Party A may transfer its rights and obligations under this Agreement, in whole or in part, to any other Affiliate of Party A, provided that such assignment will not give rise to a Termination Event or an Event of Default with respect to either Party A or such assignee of Party A. Each party further agrees that Party A may share any information concerning Party B with any Affiliate. Party B may not transfer its rights and obligations under this Agreement without the prior written consent of Party A.
- (i) **Recorded Conversations.** Each party may electronically record any and all telephone conversations between itself and the other party in connection with this Agreement (including any Transaction) and agrees that any such recordings may be submitted in evidence to any court or in any proceeding for the purpose of establishing any matters pertinent thereto.
- (j) **Condition Precedent to Payments to the Defaulting Party.** All obligations on a non-defaulting party ("X") and any Affiliate of X under this Agreement, any Specified Transaction with the other Party ("Y"), and any other matured or liquidated obligation to Y, are subject to the condition precedent that Y shall have performed all of its obligations to X and any Affiliate of X under this Agreement, any Specified Transaction with X, and all other matured or liquidated obligations of Y, whether or not contingent and regardless of the currency, place of payment, or booking office of the obligation.

- (k) PARTY A AND PARTY B ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT. IF PARTY A AND PARTY B ARE PARTIES TO AN AGREEMENT THAT CONTAINS A JUDICIAL REFERENCE PROVISION, THEN THE TERMS OF SUCH PROVISION ARE HEREBY INCORPORATED INTO AND MADE A PART OF THIS AGREEMENT AND IN THE EVENT THE JURY TRIAL WAIVER SET FORTH ABOVE IS NOT ENFORCEABLE, THE PARTIES ELECT TO PROCEED UNDER THE TERMS OF THE JUDICIAL REFERENCE PROVISION.

COMERICA BANK

OCEAN 4660, LLC


By: _____
Name: Greg Yovan
Title: Vice President
Date: January 25, 2008


By: _____
Name: Hanna Karcho
Title: Member
Date: _____



copy

Confirmation

Date: January 25, 2008

To: Ocean 4660, llc
Attention: Hanna Karcho
Phone # 248.645.5400
Fax#: 248.645.5015

From: COMERICA BANK

Subject: Swap Transaction (Ref SW1558)

The purpose of this communication is to set forth the terms and conditions of the swap transaction entered into on the Trade Date referred to below (the "Swap Transaction"), between **COMERICA BANK** ("Party A") and **OCEAN 4660, LLC** ("Party B"). This communication constitutes a "Confirmation" as referred to in the Swap Agreement specified below.

This confirmation supplements, forms part of, and is subject to, the Master Agreement, dated January 25, 2008, between Party A and Party B (the "Swap Agreement"). All provisions contained in, or incorporated by reference to such Swap Agreement shall govern this Confirmation except as expressly modified below.

Party A and Party B each represent that entering into the Swap Transaction is authorized and does not violate any laws of its jurisdiction of organization or residence or the terms of any agreement to which it is a party, and it has reached its own conclusions about the Swap Transaction, and any legal, regulatory, tax, accounting or economic consequences arising from the Swap Transaction, and has concluded that the Swap Transaction is suitable in light of its own evaluation of the Swap Transaction and its own financial capabilities and sophistication.

This Confirmation incorporates the definitions and provisions contained in the 2000 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc.) (The "Definitions"). In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.



The terms of the particular Swap Transaction to which this Confirmation relates are as follows:

Party A:	COMERICA BANK
Party B:	OCEAN 4660, LLC
Initial Notional Amount:	\$10,850,000.00 USD
Notional Schedule:	See Schedule A – Dates will adjust according to the Modified Following Business Day Convention.
Trade Date:	January 25, 2008
Effective Date:	February 1, 2008
Termination Date:	February 1, 2011 subject to adjustment In accordance with the Modified Following Business Day convention, with respect to a New York and London Banking Day.

FIXED AMOUNTS:

Fixed Rate Payer:	OCEAN 4660, LLC [Party B]
Fixed Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment or Early Payment applies:]	Monthly on the 1st day of each month, commencing March 01, 2008, through and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.
Fixed Rate:	3.40%
Fixed Rate Day Count Fraction:	Actual / 360

FLOATING AMOUNTS:

Floating Rate Payer:	COMERICA BANK [Party A]
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Floating Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment or Early Payment applies]:

Monthly on the 1st day of each month, commencing March 01, 2008, through and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate for initial Period:

TBD

Floating Rate Option:

USD-LIBOR-BBA

Designated Maturity:

One (1) month

Floating Rate Day Count Fraction:

Actual / 360

Reset Dates:

The first day of each Floating Rate Payer Calculation Period

Business Days

New York and London

Calculation Agent:

Comerica Bank

Offices:

Party A is not a Multi branch Party
Party B is not a Multi branch Party

Payment instructions for Party A in:

We will settle amounts to your account
1852-40098-3 with Comerica Bank

Payment instructions for Party B in:

We will settle amounts to your account
1852-40098-3 with Comerica Bank



Schedule A *			
From and Including	To	Monthly Notional Amortization	Outstanding Notional Amount
02/01/08	03/03/08	37,627.49	10,850,000.00
03/03/08	04/01/08	37,812.49	10,812,372.51
04/01/08	05/01/08	37,998.40	10,774,560.03
05/01/08	06/02/08	38,185.22	10,736,561.63
06/02/08	07/01/08	38,372.97	10,698,376.40
07/01/08	08/01/08	38,561.64	10,660,003.44
08/01/08	09/02/08	38,751.23	10,621,441.80
09/02/08	10/01/08	38,941.76	10,582,690.57
10/01/08	11/03/08	39,133.22	10,543,748.81
11/03/08	12/01/08	39,325.63	10,504,615.59
12/01/08	01/02/09	39,518.98	10,465,289.97
01/02/09	02/02/09	39,713.28	10,425,770.99
02/02/09	03/02/09	39,908.54	10,386,057.71
03/02/09	04/01/09	40,104.75	10,346,149.18
04/01/09	05/01/09	40,301.93	10,306,044.42
05/01/09	06/01/09	40,500.09	10,265,742.49
06/01/09	07/01/09	40,699.21	10,225,242.40
07/01/09	08/03/09	40,899.32	10,184,543.19
08/03/09	09/01/09	41,100.40	10,143,643.88
09/01/09	10/01/09	41,302.48	10,102,543.48
10/01/09	11/02/09	41,505.55	10,061,241.00
11/02/09	12/01/09	41,709.62	10,019,735.44
12/01/09	01/04/10	41,914.69	9,978,025.82
01/04/10	02/01/10	42,120.77	9,936,111.13
02/01/10	03/01/10	42,327.87	9,893,990.36
03/01/10	04/01/10	42,535.98	9,851,662.49
04/01/10	05/04/10	42,745.11	9,809,126.51
05/04/10	06/01/10	42,955.28	9,766,381.40
06/01/10	07/01/10	43,166.47	9,723,426.12
07/01/10	08/02/10	43,378.71	9,680,259.65
08/02/10	09/01/10	43,591.99	9,636,880.94
09/01/10	10/01/10	43,806.32	9,593,288.95
10/01/10	11/01/10	44,021.70	9,549,482.64
11/01/10	12/01/10	44,238.14	9,505,460.94
12/01/10	01/04/11	44,455.64	9,461,222.81
01/04/11	02/01/11		9,416,767.17

* Dates will adjust according to the Modified Following Business Day Convention.



Please confirm that the foregoing correctly sets forth the terms of our agreement with respect to the Swap Transaction by signing in the space provided below and sending a copy of the executed Confirmation by fax (248-371-6801).

It has been a pleasure working with you on this transaction and we look forward to working with you again in the future.

COMERICA BANK

By: _____
Name: Greg Yovan
Title: Vice President
Date: January 25, 2008

Confirmed:

OCEAN 4660, LLC

By: _____
Name: Hanna Karcho
Title: Member
Date:

Global Capital Market Operations
Telephone: (248)371-6746
Facsimile: (248)371-6841
Email: FMOperations_CAL@comerica.com



3551 Hamlin Road, 2nd Floor
Auburn Hills, MI 48326

PAYMENT CONFIRMATION

To: Ocean 4660, llc

January 31, 2011

ATTN: Ms Hanna Karcho
Phone No.: (248) 645-5400
Fax No.: (248) 645-5015

The following rate setting and payment calculations have been made for deal number SW1558 between Comerica Bank and Ocean 4660, llc dated February 1, 2008 and maturing on February 1, 2011.

Counterparty Reference #:

Comerica Bank Receives:

Period Start: 01/04/2011 Period End: 02/01/2011

Rate Description: Fixed Rate

Current Rate: 3.400000
Day Basis: A/3
Day Count: 28
Notional Amount: 9,416,767.17
Currency: USD
Payment Amount: 24,902.12

Comerica Bank Pays:

Period Start: 01/04/2011 Period End: 02/01/2011

Rate Description:
TELERATE 1 MO LIBOR

Current Rate: 0.260630
Day Basis: A/3
Day Count: 28
Notional Amount: 9,416,767.17
Currency: USD
Payment Amount: 1,908.89

On February 1, 2011 Ocean 4660, llc shall pay Comerica Bank 22,993.23 at

FL DDA 1811-054-335

If any of the above information is incorrect, please contact us.

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INSTR # 107609277
OR BK 44971 Pages 797 - 821
RECORDED 01/07/08 12:33:41
BROWARD COUNTY COMMISSION
DOC STMP-M: \$41475.00
INT TAX: \$1 \$23700.00
DEPUTY CLERK 1033
#12, 25 Pages

Record & return to:

Marvin S. Rosen
Ruden, McClosky, Smith, Schuster & Russell, P.A.
222 Lakeview Avenue, Suite 800
West Palm Beach, FL 33401

DRAFTED BY: Larry R. Shulman Bodman LLP 6 th Floor at Ford Field 1901 St. Antoine Street Detroit, Michigan 48226 (313) 259-7777	WHEN RECORDED RETURN TO: Bodman LLP 6 th Floor at Ford Field 1901 St. Antoine Street Detroit, Michigan 48226 Attention: Banking Paralegals (313) 259-7777
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CONTINUING COLLATERAL MORTGAGE

(THIS IS A FUTURE ADVANCE MORTGAGE)

Notwithstanding the principal amount of the Indebtedness (as hereinafter defined) secured by this Mortgage, recovery of principal under this Mortgage shall be limited to \$11,850,000. Therefore, intangible tax in the amount of \$23,700 and documentary stamp tax in the amount of \$41,475 are being paid upon recordation of this Mortgage.

This Continuing Collateral Mortgage ("Mortgage") is made as of January 3, 2008, by Ocean 4660, LLC, a Florida limited liability company (individually and collectively if more than one party "Mortgagor"), located at 40800 Woodward Avenue, Bloomfield Hills, Michigan 48304 to COMERICA BANK ("Mortgagee"), located at 39200 Six Mile Road, Livonia, Michigan 48152, Attention: Commercial Loan Documentation, Mail Code 7578. As security for the purposes stated in this Mortgage, Mortgagor mortgages, warrants, and assigns to Mortgagee, its successors and assigns, the real property in the County of Broward, State of Florida, legally described as:

See Attached Exhibit "A"

together with: (a) all related easements, hereditaments, appurtenances, rights, licenses and privileges; (b) all buildings and improvements now or later situated under, upon or over any of the above described land; (c) all the rents, issues, profits, revenues, accounts and general intangibles arising from the above described land, or relating to any business conducted by Mortgagor on it, under present or future leases, licenses or otherwise; (d) all machinery, equipment, goods, fixtures, and articles of personal property of every kind and nature (other than Household Goods, as defined by 12 CFR 227.12, as amended from time to time, and other than consumer goods, as defined in the Uniform Commercial Code, unless such goods were purchased with the proceeds of any loan specifically referenced as being secured by this



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Mortgage), now or later located upon the above described land and useable in connection with any present or future operation on the land (individually and collectively the "equipment") including, without limit, all lighting, heating, cooling, ventilating, air-conditioning, incinerating, refrigerating, plumbing, sprinkling, communicating and electrical systems, and all general intangibles, including without limit software, acquired or used in connection therewith. It is agreed that all equipment shall for the purposes of this Mortgage, unless Mortgagee shall otherwise elect, be deemed conclusively to be real estate and mortgaged under this Mortgage; (e) all "as-extracted collateral"; and (f) all awards or payments, and interest on them, made with respect to the Premises as a result of (i) any eminent domain proceeding, (ii) any street grade alteration, (iii) any loss of or damage to any building or other improvement, (iv) any other injury to or decrease in the value of the Premises, (v) any refund due on account of the payment of real estate taxes, assessments or other charges levied against the Premises or (vi) any refund of utility deposits or right to any tenant deposit (all of the above individually and collectively the "Premises"). Unless otherwise indicated, a reference to the "Premises" means all and/or any part of the Premises.

This Mortgage is made to secure when due, whether by stated maturity, demand, acceleration or otherwise, all existing and future indebtedness ("Indebtedness") to Mortgagee of N/A ("Borrower") and/or Mortgagor, including without limit payment of Eleven Million Eight Hundred Fifty Thousand Dollars (\$11,850,000) as evidenced by (i) that certain Variable Rate-Installment Note dated as of the date hereof made in the principal amount of Ten Million Eighty Hundred Fifty Thousand Dollars (\$10,850,000) by Mortgagor in favor of Mortgagee and (ii) that certain Draw to Note dated as of the date hereof made in the principal amount of One Million Dollars (\$1,000,000) by Mortgagor in favor of Mortgagee (as each may be amended, restated or replaced from time to time, a "Note" and collectively, the "Notes"). Indebtedness includes, without limit, any and all obligations or liabilities of whatever amount of Borrower and/or Mortgagor to Mortgagee, whether absolute or contingent, direct or indirect, voluntary or involuntary, liquidated or unliquidated, joint or several, known or unknown; any and all indebtedness, obligations or liabilities for which Borrower and/or Mortgagor would otherwise be liable to Mortgagee were it not for the invalidity, irregularity or unenforceability of them by reason of any bankruptcy, insolvency or other law or order of any kind, or for any other reason; any and all amendments, modifications, renewals and/or extensions of any of the above; all costs incurred by Mortgagee in establishing, determining, continuing, or defending the validity or priority of its lien or security interest, or to protect the value of the Premises, or for any appraisal, environmental audit, title examination or title insurance policy relating to the Premises, or in pursuing its rights and remedies under this Mortgage or under any other agreement between Mortgagee and Borrower and/or Mortgagor; all costs incurred by Mortgagee in connection with any suit or claim involving or against Mortgagee in any way related to the Premises, the Indebtedness or this Mortgage; and all costs of collecting Indebtedness; all of the above costs including, without limit, attorney fees incurred by Mortgagee. Mortgagor agrees to pay Mortgagee, upon demand, all costs incurred by Mortgagee which are Indebtedness, and until paid all costs shall bear interest from the time incurred at the highest per annum rate applicable to any of the Indebtedness, but not in excess of the maximum rate permitted by law. Any reference in this Mortgage to attorney fees shall be deemed a reference to all reasonable fees, charges, costs and expenses of both in-house and outside counsel and paralegals, whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorney fees or court costs are incurred at the trial court level, on appeal, in a bankruptcy,

administrative or probate proceeding or otherwise. Notwithstanding the foregoing, this Mortgage shall not secure that part of the Indebtedness, if any, which constitutes a consumer loan, other than a consumer loan made at the same time as this Mortgage and specifically referenced as being secured by this Mortgage (and all extensions, renewals, modifications or replacements thereof).

Future Advances. This Mortgage is given to secure not only the existing indebtedness of \$11,850,000 of the Mortgagor to the Mortgagee evidenced by the Note(s) secured hereby, but also such future advances up to an additional \$10,000,000 as are made within 20 years from date hereof, plus interest thereon, and any disbursements made by Mortgagee for the payment of taxes, insurance or other liens on the property encumbered by this Mortgage, with interest on such disbursements, which advances shall be secured hereby to the same extent as if such future advances were made this date. The total amount of indebtedness secured hereby may increase or decrease from time to time. The provisions of this paragraph shall not be construed to imply any obligation on Mortgagee to make any future advances, it being the intention of the parties that any future advances shall be solely at the discretion and option of the Mortgagee. Any reference to "Note" in this Mortgage shall be construed to reference any future advances made pursuant to this paragraph.

Mortgagor, on a continuing basis, warrants, covenants and agrees to and with Mortgagee, which covenants, warranties and agreements, to the extent permitted by law, shall be deemed to run with the land, as follows:

1. Mortgagor will pay to Mortgagee all Indebtedness according to the terms of the relevant instruments evidencing it, and Mortgagor agrees that this Mortgage is a continuing mortgage securing the payment of the Indebtedness.
2. Mortgagor has good and indefeasible title to the entire Premises in fee simple and with full power to sell, mortgage and convey it; the Premises are free of all easements, restrictions, liens, leases and encumbrances whether now existing or later created, except those matters listed on attached Exhibit "B" (if any) to which this Mortgage is expressly subject, and Mortgagor will warrant and defend the Premises against all other claims. Mortgagee shall have the right, at its option and at such times as it, in its sole discretion deems necessary, to take whatever action it may deem necessary to defend or uphold the lien of this Mortgage or otherwise enforce any of its rights under this Mortgage or any obligation secured by this Mortgage including, without limit, the right to institute appropriate legal proceedings for these purposes. With respect to the right, title, or lien of any person or entity which is superior to the lien of this Mortgage, Mortgagee has the right, but not the obligation, to acquire and/or pay off the holder of such right, title, or lien and add the amount so paid to the Indebtedness.
3. Mortgagor shall not mortgage or pledge the Premises as security for any other indebtedness or obligations. Mortgagor shall pay when due, and before any interest, collection fees or penalties accrue or default occurs, all payments required under any mortgages on the Premises, and all taxes, assessments, and other charges and impositions levied, assessed or existing with respect to (i) the Premises or (ii) the execution, delivery or recordation of this Mortgage or any note or other instrument evidencing or securing repayment of the Indebtedness or the interest of Mortgagee in the Premises, and will deliver to Mortgagee without demand

official receipts showing these payments. If Mortgagor fails to pay these mortgage payments, taxes, assessments, other charges or impositions when due, or if Mortgagor fails to pay all interest, collection fees and penalties accrued on them, Mortgagee, at its sole option, may (but is not obligated to) pay them and the monies paid shall be added to the Indebtedness. Mortgagor shall pay (before the same become liens or encumbrances against the Premises) any and all obligations or liabilities for repairs or improvements to the Premises or for any other goods, services, or utilities furnished to the Premises. At the sole option of Mortgagee, Mortgagor shall pay to Mortgagee on the first day of each month a pro rata portion of all taxes, assessments, liens, mortgages, and other charges levied, assessed or existing on the Premises in an amount sufficient to pay them when due, plus payments (based on single item or aggregate analysis, as determined by Mortgagee under applicable law) sufficient to maintain an additional balance of not more than one-sixth of that amount, all as estimated by Mortgagee. In the event that sufficient funds have been deposited with Mortgagee to cover the amount of these taxes, assessments, liens, mortgages, and other charges when they become due and payable, Mortgagee shall pay them. In the event that sufficient funds have not been deposited to cover the amount of these taxes, assessments, liens, mortgages and other charges at least fifteen (15) days prior to the time when they become due and payable, Mortgagor shall immediately upon request by Mortgagee pay the amount of the deficiency to Mortgagee. Mortgagee shall not be required to keep in a separate account or to pay Mortgagor any interest or earnings whatever on the funds held by Mortgagee for the payment of taxes, assessments, liens, mortgages, or other charges pursuant to this paragraph or for the payment of insurance premiums under paragraph (4) below, or on any other funds deposited with Mortgagee in connection with this Mortgage. If an Event of Default occurs under this Mortgage, any funds then remaining on deposit with Mortgagee may be applied against the Indebtedness immediately upon or at any time after the Event of Default occurs, and without notice to Mortgagor. No lienholder junior to this Mortgage may exercise any rights with respect to the Premises, and all rents and other proceeds from the Premises shall be held in trust by the junior lienholder as the property of Mortgagee, until satisfaction in full of the Indebtedness. Nothing in this paragraph shall be considered a consent by Mortgagee to any lien, mortgage or encumbrance on the Premises unless set forth on attached Exhibit "B", if any.

4. Mortgagor shall keep the buildings and all other improvements now or later existing on the Premises constantly insured for the benefit of Mortgagee against fire and other hazards and risks, including without limit vandalism and malicious mischief, as Mortgagee may require and shall further provide flood insurance (if the Premises are situated in a special flood hazard area as determined by the Director of the Federal Emergency Management Agency or other governing agency), loss of rents insurance, public liability and product liability insurance and any other insurance as Mortgagee may require from time to time, all in amounts and in forms and with companies as are satisfactory to Mortgagee. Mortgagor shall deliver to Mortgagee the policies evidencing the required insurance with premiums fully paid for one year in advance and with standard mortgagee clauses satisfactory to Mortgagee. Renewals of the required insurance (together with evidence of premium prepayment for one year in advance) shall be delivered to Mortgagee at least thirty (30) days before the expiration of any existing policies. All policies and renewals shall provide that they may not be canceled or amended without giving Mortgagee thirty (30) days prior written notice of cancellation or amendment. All policies and renewals shall be held by, and are pledged to, Mortgagee, along with all insurance premium rebates, as additional security for the Indebtedness. Should Mortgagor fail to insure or fail to pay the premiums on any required insurance or fail to deliver the policies or renewals of them as

provided above, Mortgagee may (but is not obligated to) have the insurance issued or renewed (and pay the premiums on it for the account of Mortgagor) in amounts and with companies and at premiums as Mortgagee deems appropriate. If Mortgagee elects to have insurance issued or renewed to insure Mortgagee's interest, Mortgagee shall have no obligation to also insure Mortgagor's interest or to notify Mortgagor of Mortgagee's actions. Any sums paid by Mortgagee for insurance as provided above shall be added to the Indebtedness. In the event of loss or damage, the proceeds of all required insurance shall be paid to Mortgagee alone. No loss or damage shall itself reduce the Indebtedness. Mortgagee and any of Mortgagee's employees is each irrevocably appointed attorney-in-fact for Mortgagor and is authorized to adjust and compromise each loss without the consent of Mortgagor, to collect, receive and receipt for the insurance proceeds in the name of Mortgagee and Mortgagor and to endorse Mortgagor's name upon any check in payment of the loss. The proceeds shall be applied first toward reimbursement of all costs and expenses of Mortgagee in collecting the proceeds (including, without limit, attorneys' fees), and then toward payment of the Indebtedness or any portion of it, whether or not then due or payable and in whatever order of maturity as Mortgagee may elect, or Mortgagee, at its option, may apply any or all the insurance proceeds to the repair or rebuilding of the Premises. Application of proceeds by Mortgagee toward later maturing installments of the Indebtedness shall not excuse Mortgagor from making the regularly scheduled installment payments nor shall such application extend the due date or reduce the amount of any of these payments. Application of proceeds by Mortgagee toward payment of the Indebtedness shall constitute an acceleration and prepayment and shall subject Mortgagor to any applicable prepayment premium or formula. In the event of a foreclosure of this Mortgage, or the giving of a deed in lieu of foreclosure, the purchaser or grantee of the Premises shall succeed to all of the rights of Mortgagor under said insurance policies. At the sole option of Mortgagee, Mortgagor shall pay to Mortgagee on the first day of each month a pro rata portion of the annual premiums (as estimated by Mortgagee) for the required insurance in an amount sufficient to pay them when due, plus payments (based on single item or aggregate analysis, as determined by Mortgagee under applicable law) sufficient to maintain an additional balance of not more than one-sixth of that amount. In the event that sufficient funds have been deposited with Mortgagee to cover the amount of the insurance premiums for required insurance when the premiums become due and payable, Mortgagee shall pay the premiums. In the event that sufficient funds have not been deposited with Mortgagee to pay the insurance premiums at least fifteen (15) days prior to the time when they become due and payable, Mortgagor shall immediately upon request pay the amount of this deficiency to Mortgagee. Mortgagor shall promptly repair, replace or rebuild each part of the Premises which may be damaged or destroyed by fire or other casualty or which may be affected by any eminent domain proceedings, notwithstanding application by Mortgagee of the insurance proceeds or eminent domain award to payment of the Indebtedness.

5. Mortgagor shall abstain from commission of waste upon the Premises, keep the Premises in good repair, and promptly comply with all laws, regulations and requirements of all governmental bodies affecting the Premises. If Mortgagee determines that the Premises requires inspection, testing, appraisal, repair, care, alteration or attention of any kind, Mortgagee or its representatives may (but is not obligated to) enter upon the Premises, and inspect, test, appraise, repair, alter or maintain the Premises as Mortgagee may deem necessary, and Mortgagor shall reimburse Mortgagee upon demand for all resulting costs and expenses incurred by Mortgagee. Any inspection, audit, appraisal or examination by Mortgagee or its representatives of the Premises or of information or documents pertaining to the Premises is for the sole purpose of

protecting Mortgagee's interests under this Mortgage and is not for the benefit or protection of Mortgagor or any third party. Mortgagee has no obligation to provide Mortgagor or any third party with information concerning, or results of, any inspection, audit, appraisal or examination by Mortgagee or its representatives. If Mortgagee, in its sole discretion, discloses information to Mortgagor this disclosure is for the sole protection of Mortgagee, does not constitute an agreement to further disclosure and does not create a warranty by Mortgagee as to the accuracy, sufficiency or any other aspect of the disclosure. Mortgagee may spend money as Mortgagee deems essential to protect the value of the Premises. Mortgagor shall not make or permit any other party to make any material alterations, additions or improvements of any type to the Premises (individually and collectively the "Improvements"), regardless of whether the Improvements would increase the value of the Premises, without Mortgagee's prior written consent. This consent may be withheld by Mortgagee in its sole discretion. If Mortgagee consents to the making of any Improvements and the Improvements are not completed with due diligence in accordance with the plans and specifications approved in writing by Mortgagee, or if construction of the Improvements should cease before completion for a period of thirty (30) days, then and in either event it shall be an Event of Default under this Mortgage and Mortgagee shall have all the rights and remedies provided in this Mortgage, including without limitation, the right (but not the obligation) to enter or cause entry to be made upon the Premises and complete the Improvements and its costs shall be added to the Indebtedness. If any action is threatened or commenced which affects Mortgagee's interest in the Premises, including, without limit, building, environmental or zoning proceedings, Mortgagee may take such action as it deems necessary to protect its interest and its costs shall be added to the Indebtedness.

6. In the event the Premises is taken under power of eminent domain, or by condemnation, the entire proceeds of the award shall be paid directly to Mortgagee and applied toward reimbursement of all Mortgagee's costs and expenses incurred in connection with collecting the award (including, without limit, attorney fees), and the balance applied upon the Indebtedness whether or not then due or payable in whatever manner Mortgagee deems advisable. Application by Mortgagee of any condemnation award or portion of it toward the last maturing installments of the Indebtedness shall not excuse Mortgagor from making the regularly scheduled payments nor extend the due date or reduce the amount of these payments. Application of any condemnation award by Mortgagee toward payment of the Indebtedness shall constitute an acceleration and a prepayment and shall subject Mortgagor to any applicable prepayment premium or formula. Mortgagee or any of Mortgagee's employees is irrevocably appointed attorney-in-fact and is duly authorized and empowered to receive, receipt for, discharge and satisfy any condemnation award and judgment, whether joint or several, on behalf of Mortgagor. Mortgagee shall not be liable for failure to collect any condemnation award, regardless of the cause of such failure.

7. The Indebtedness shall become due and payable immediately, without notice, at the option of Mortgagee, if Mortgagor shall convey, assign or transfer the Premises by deed, land contract or other instrument, or if title to the Premises shall become vested in any other person or party in any manner whatsoever or if there is any disposition (through one or more transactions) of legal or beneficial title to a controlling interest of Mortgagor. In the event ownership of the Premises becomes vested in a person or persons other than Mortgagor (with or without the prior written approval of Mortgagee), Mortgagee may (but shall not be obligated to) deal with and may enter into any contract or agreement with the successor(s) in interest with reference to this

Mortgage in the same manner as with Mortgagor, without in any manner discharging or otherwise affecting the lien of this Mortgage or Mortgagor's liability under this Mortgage or upon the Indebtedness.

8. This Mortgage shall, as to any personal property covered by it, be deemed to grant a security interest in the personal property pursuant to the Uniform Commercial Code. Mortgagor agrees, upon request of Mortgagee from time to time, to promptly furnish a detailed list of personal property subject to this Mortgage and, upon request by Mortgagee, to immediately execute, deliver and/or file any mortgage, security agreement or financing statement to include specifically this list of personal property and to immediately take such other actions as deemed necessary or desirable by Mortgagee to evidence, perfect or continue the security interests granted in this Mortgage; and Mortgagee or any agent of Mortgagee is hereby authorized in its own name, and is also hereby irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney in fact for Mortgagor (with full power of substitution) in the name and place of Mortgagor, to execute and file such security agreements and financing statements and to take such other actions as deemed necessary or desirable by Mortgagee to evidence, perfect or continue the security interests granted in this Mortgage. Upon the occurrence of any Event of Default under this Mortgage, Mortgagee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code or otherwise provided by law or by this Mortgage including, without limit, the right to require Mortgagor to assemble the personal property and make it available to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to both parties, the right to take possession of the personal property with or without demand and with or without process of law and the right to sell and dispose of it and distribute the proceeds according to law. Mortgagor agrees that any requirement of reasonable notice shall be met if Mortgagee sends notice to Mortgagor at least ten (10) days prior to the date of sale, disposition or other event giving rise to the required notice. Mortgagor agrees that the proceeds of any disposition of the personal property may be applied by Mortgagee first to Mortgagee's reasonable expenses in connection with the disposition including, without limit, attorney fees, and then to payment of the Indebtedness. At any sale or other disposition of the personal property pursuant to this paragraph, Mortgagee disclaims all warranties which would otherwise be given under the Uniform Commercial Code, including without limit a disclaimer of any warranty relating to title, possession, quiet enjoyment or the like, and Mortgagee may communicate these disclaimers to a purchaser at such disposition. This disclaimer of warranties will not render the sale commercially unreasonable. Mortgagor agrees that Mortgagee shall be under no obligation to accept any noncash proceeds in connection with any sale or disposition of the personal property covered by this Mortgage, unless failure to do so would be commercially unreasonable. If Mortgagee agrees in its sole discretion to accept noncash proceeds (unless the failure to do so would be commercially unreasonable), Mortgagee may ascribe any commercially reasonable value to such proceeds. Without limiting the foregoing, Mortgagee may apply any discount factor in determining the present value of proceeds to be received in the future or may elect to apply proceeds to be received in the future only as and when such proceeds are actually received in cash by Mortgagee. Mortgagor represents that its exact name is its name as set forth in this Mortgage and that Mortgagor is incorporated (as determined pursuant to Article 9 of the Uniform Commercial Code) in Michigan, unless otherwise expressly specified in this Mortgage. Mortgagor will give Mortgagee not less than 90 days prior written notice of all contemplated changes in Mortgagor's name, location, chief executive office, state of incorporation, or principal place of business, but the

giving of this notice shall not cure any Event of Default caused by this change. "Uniform Commercial Code" means Florida Statutes Chapter 679, as amended, revised or replaced from time to time. Notwithstanding the foregoing, the parties intend that the terms used herein which are defined in the Uniform Commercial Code have, at all times, the broadest and most inclusive meanings possible. Accordingly, if the Uniform Commercial Code shall in the future be amended or held by a court to define any term used herein more broadly or inclusively than the Uniform Commercial Code in effect on the date of this Agreement, then such term, as used herein, shall be given such broadened meaning. If the Uniform Commercial Code shall in the future be amended or held by a court to define any term used herein more narrowly, or less inclusively, than the Uniform Commercial Code in effect on the date of this Agreement, such amendment or holding shall be disregarded in defining terms used in this Agreement.

9. As additional security for the payment and performance of the Indebtedness, Mortgagor grants a security interest to Mortgagee in all deposit or other accounts with Mortgagee and Mortgagor assigns to Mortgagee all its right, title and interest in all written and oral leases and occupancy agreements, now or later existing, covering the Premises (but without an assumption by Mortgagee of liabilities of Mortgagor under any of these leases or occupancy agreements by virtue of this assignment), and Mortgagor assigns to Mortgagee the rents, issues and profits of the Premises. If an Event of Default occurs under this Mortgage, Mortgagee may receive and collect the rents, issues and profits personally or through a receiver so long as the Event of Default exists and during the pendency of any foreclosure proceedings and during any redemption period. Mortgagor agrees to consent to the appointment of a receiver if this is believed necessary or desirable by Mortgagee to enforce its rights under this Mortgage. Mortgagee shall at no time have any obligation to attempt to collect rent or other amounts from any tenant or occupier of the Premises. Mortgagee shall at no time have any obligation to enforce any other obligations owed by tenants or occupiers of the Premises to Mortgagor. No action taken by Mortgagee under this Mortgage shall make Mortgagee a "mortgagee in possession." Mortgagor shall at no time collect advance rent under any lease or occupancy agreement pertaining to the Premises in excess of one month (other than as a security deposit) and Mortgagee shall not be bound in any respect by any rent prepayment in violation of this prohibition. The assignment of licenses and permits under this Mortgage shall not be construed as a consent by Mortgagee to any license or permit so assigned, or to impose upon Mortgagee any obligations with respect to them. Mortgagor shall not cancel or amend any of the licenses and permits assigned (nor permit any of them to terminate if they are necessary or desirable for the operation of the Premises) without first obtaining the written approval of Mortgagee. This paragraph shall not be applicable to any license or permit that terminates if it is assigned without the consent of another party (other than Mortgagor), unless this consent has been obtained nor shall this paragraph be construed as a present assignment of any license or permit that Mortgagor is required by law to hold. Mortgagor shall comply with and perform as required all obligations and restrictions imposed upon Mortgagor or the Premises under applicable deed restrictions, restrictive covenants, easements, leases, land contracts, condominium or planned unit development documents, or other agreements affecting the Premises, but this is not a consent by Mortgagee to take subject to any of these agreements unless specifically set forth on attached Exhibit "B", if any, and Mortgagee does not assume any obligations under these agreements. Mortgagor shall promptly provide Mortgagee with certificates of occupancy, licenses, rent rolls, income and expense statements and other documents and information pertaining to the Premises and its operations as Mortgagee, from time to time, may request. The rights and remedies in

favor of Mortgagee granted by this Mortgage shall be in addition to and shall not in any way constitute a limitation upon the rights and remedies available to Mortgagee under applicable law, including without limitation all rights under Chapter 697.07, Florida Statutes, regarding assignment of rents and all rights under Chapter 702, Florida Statutes, regarding foreclosure actions.

10. (a) Mortgagor represents and covenants that Mortgagor has not used Hazardous Materials (as later defined) on or affecting the Premises in any manner which violates Environmental Laws (as later defined), that there is no condition concerning the Premises which could require remediation pursuant to Environmental Laws, and that, to the best of Mortgagor's knowledge, no prior owner of the Premises or any current or prior occupant has used Hazardous Materials on or affecting the Premises in any manner which violates Environmental Laws. Mortgagor covenants and agrees that neither it nor any occupant shall use, introduce or maintain Hazardous Materials on the Premises unless done in strict compliance with all Environmental Laws; (b) Mortgagor shall conduct and complete all investigations, environmental audits, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on or affecting the Premises, whether caused by Mortgagor or a third party, in accordance with all Environmental Laws to the satisfaction of Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities, and Mortgagor shall notify Mortgagee in writing prior to taking, and continually after that of the status of, all such actions. Mortgagor shall, promptly upon Mortgagee's request, provide Mortgagee with copies of the results of all such actions and all related documents and information. Any remedial, removal or other action by Mortgagor shall not be deemed a cure or waiver of any breach of this paragraph 10 due to the presence or use of Hazardous Materials on or affecting the Premises. Additionally, Mortgagor shall defend, indemnify and hold harmless Mortgagee, its employees, agents, shareholders, officers and directors, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limit, attorney fees) of whatever kind arising out of or related to (i) the presence, disposal, release or threatened release of any Hazardous Materials on, from or affecting the Premises or the soil, water, air, vegetation, buildings, personal property, persons or animals on the Premises, (ii) any personal injury (including, without limit, wrongful death) or property damage (real or personal) arising out of or related to these Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached or government order related to these Hazardous Materials, (iv) the cost of removal of Hazardous Materials from any portion of the Premises, (v) taking necessary precautions to protect against the release of Hazardous Materials on or affecting the Premises, (vi) complying with all Environmental Laws and/or (vii) any violation of Environmental Laws or requirements of Mortgagee, which are in any way related to Hazardous Materials including, without limit, attorneys and consultants' fees (the attorneys and consultants to be selected by Mortgagee), investigation and laboratory fees and environmental studies required by Mortgagee (whether prior to foreclosure, or otherwise). Upon the request of Mortgagee, Mortgagor and any guarantor shall execute a separate indemnity consistent with this paragraph; (c) Mortgagor has never received any notice ("Environmental Complaint") of any potential violation of Environmental Laws with respect to Mortgagor or the Premises (and, within five (5) days of receipt of any Environmental Complaint, Mortgagor shall give Mortgagee a copy of it), and to the best of Mortgagor's knowledge, there have been no actions commenced or threatened by any party with respect to Mortgagor or the Premises for noncompliance with any Environmental Laws; (d) In the event this Mortgage is foreclosed or Mortgagor tenders a

deed in lieu of foreclosure, Mortgagor shall deliver the Premises to Mortgagee, purchaser or grantee, as the case may be, free of Hazardous Materials so that the condition of the Premises shall not be a violation of any Environmental Laws; (e) Upon ten (10) days notice to Mortgagor (except in an emergency or where not practical under applicable law, in which case notice is waived), and without limitation of Mortgagee's other rights under this Mortgage or elsewhere, Mortgagee has the right, but not the obligation, to enter on the Premises and to take those actions as it deems appropriate to investigate or test for, clean up, remove, resolve, minimize the impact of or advise governmental agencies of the possible existence of any Hazardous Materials upon Mortgagee's receipt of any notice from any source asserting the existence of any Hazardous Materials or an Environmental Complaint pertaining to the Premises which, if true, could result in an order, suit or other action against Mortgagor or any part of the Premises which, in the sole opinion of Mortgagee, could jeopardize its security under this Mortgage. Any such actions conducted by Mortgagee shall be solely for the benefit of and to protect the interests of Mortgagee and shall not be relied upon Mortgagor or any third party for any purpose. By conducting any such actions, Mortgagee does not assume control over the environmental affairs or operations of Mortgagor nor assume any liability of Mortgagor or any third party; (f) The provisions of this paragraph 10 shall be in addition to all other obligations and liabilities Mortgagor may have to Mortgagee at common law or pursuant to any other agreement, and shall survive (i) the repayment of the Indebtedness, (ii) the satisfaction of all other obligations of Mortgagor under this Mortgage and under the other loan documents, (iii) the discharge of this Mortgage, and (iv) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure; and (g) For purposes of this Mortgage, (i) "Hazardous Materials" means each and all of the following: hazardous materials and/or substances as defined in any Environmental Law, asbestos, petroleum, petroleum by-products, natural gas, flammable explosives, radioactive materials, and toxic materials, and (ii) "Environmental Laws" mean any and all federal, state, local or other laws (whether under common law, by legislative action or otherwise), rules, policies, ordinances, directives, orders, statutes, or regulations an object of which is to regulate or improve health, safety, or the environment.

11. Upon the occurrence of any of the following events (each an "Event of Default"), Mortgagor shall be in default under this Mortgage: (a) Any failure to pay the Indebtedness or any other indebtedness when due, by acceleration or otherwise; (b) Any failure to comply with, or breach of, any term of this Mortgage, or any other agreement between Borrower, Mortgagor, or any guarantor of any of the Indebtedness ("guarantor") and Mortgagee; (c) Any warranty, representation, or other information made, given or furnished to Mortgagee by or on behalf of Borrower, Mortgagor, or any guarantor shall be, or shall prove to have been, false or materially misleading when made, given, or furnished; (d) Any loss, theft, substantial damage or destruction to or of any of the Premises, or the issuance or filing of any attachment, levy, garnishment or the commencement of any proceeding in connection with any of the Premises or of any other judicial process of, upon or in respect of Borrower, Mortgagor, any guarantor, or any of the Premises; (e) Sale or other disposition by Borrower, Mortgagor, or any guarantor of any substantial portion of its assets or property; or voluntary suspension of the transaction of business by Borrower, Mortgagor, or any guarantor; or death, dissolution, termination of existence, merger, consolidation, insolvency, business failure, or assignment for the benefit of creditors of or by Borrower, Mortgagor, or any guarantor; or commencement of any proceedings under any state or federal bankruptcy or insolvency laws or laws for the relief of debtors by or against Borrower, Mortgagor, or any guarantor; or the appointment of a receiver, trustee, court

appointee, sequestrator or otherwise, for all or any part of the property of Borrower, Mortgagor, or any guarantor; (f) Default under any mortgage or security agreement against any of the Premises; or (g) Mortgagee deems itself insecure, in good faith believing that the prospect of payment of the Indebtedness or performance of this Mortgage is impaired or shall fear deterioration, removal, or waste of the Premises.

12. Acceleration of the Indebtedness as provided in this Mortgage shall trigger any applicable prepayment premium or formula. Without limiting when a prepayment premium may be due, it is agreed that, at any time after acceleration, a tender of payment of the amount necessary to satisfy the entire Indebtedness by or on behalf of Mortgagor or otherwise, must include any applicable prepayment premium or formula.

13. Immediately upon the occurrence of any Event of Default, Mortgagee shall have the option to do any or all of the following: (a) Declare the entire unpaid amount of the Indebtedness, including, without limit, accrued and unpaid interest on it and any applicable prepayment premium or formula, and all other charges payable by Mortgagor to Mortgagee, to be immediately due and payable and, at Mortgagee's option, (i) to bring suit for the same, or (ii) to take all steps and institute all other proceedings that Mortgagee deems necessary to enforce payment of the Indebtedness and performance under this Mortgage and to protect the lien of this Mortgage; (b) Commence foreclosure proceedings against the Premises through judicial proceedings. The commencement by Mortgagee of foreclosure proceedings shall be deemed an exercise by Mortgagee of its option to accelerate the Indebtedness, unless such proceedings on their face specifically indicate otherwise. Mortgagor consents to the sale of the Premises in a single parcel or in several parcels; (c) Procure new or cause to be updated abstracts, tax histories, title insurance, or title reports; (d) Obtain a receiver to manage the Premises and collect the rents, profits and income from it without notice to Borrower unless required by applicable law; (e) Contest the amount or validity of any taxes applicable to the Premises by appropriate proceedings either in Mortgagee's name, Mortgagor's name or jointly with Mortgagor. Mortgagor shall execute and deliver to Mortgagee, upon demand, whatever documents and information Mortgagee determines may be necessary or proper to so contest the taxes or to secure payment of any resulting refund. Mortgagor shall reimburse Mortgagee for all costs and expenses, including, without limit, attorney fees, incurred in connection with each tax contest proceeding. All refunds resulting from each tax contest proceeding shall belong to Mortgagee to be applied against the Indebtedness with the surplus, if any, to be paid to Mortgagor. Mortgagee and any of its employees is each irrevocably appointed attorney-in-fact for Mortgagor and is authorized to execute and deliver in the name of Mortgagor those documents deemed necessary or proper by Mortgagee to carry out any tax contest proceeding or receive any resulting refunds; and/or (f) In the event of any sale of the Premises by foreclosure, through judicial proceedings or otherwise, apply the proceeds of any such sale in the following order or such other order as Mortgagee may elect: to (i) all expenses incurred for the collection of the Indebtedness and the foreclosure of this Mortgage including, without limit, attorney fees; (ii) all sums expended or incurred by Mortgagee directly or indirectly in carrying out terms, covenants and agreements of or under this Mortgage or any related document, together with interest as provided in this Mortgage; (iii) all accrued and unpaid interest and late payment charges upon the Indebtedness; (iv) any applicable prepayment premium or formula; (v) the unpaid principal amount of the Indebtedness; and (vi) the surplus, if any, paid to Mortgagor unless a court of competent jurisdiction decrees otherwise.

14. No single or partial exercise, or delay in the exercise, of any right or power under this Mortgage, shall preclude other or further exercise of the rights and powers under this Mortgage. The unenforceability of any provision of this Mortgage shall not affect the enforceability of the remainder. This Mortgage constitutes the entire agreement of Mortgagor and Mortgagee with respect to the subject matter of this Mortgage. No amendment of this Mortgage shall be effective unless the same shall be in writing and signed by Mortgagor and an authorized officer of Mortgagee. If there is more than one Mortgagor, all undertakings, warranties and covenants made by Mortgagor and all rights and powers given to Mortgagee are made or given jointly and severally. This Mortgage shall be binding on Mortgagor and Mortgagee and on Mortgagor's and Mortgagee's heirs, legal representatives, successors and assigns including, without limit, any debtor in possession or trustee in bankruptcy for Mortgagor. This shall not be deemed a consent by Mortgagee to a conveyance by Mortgagor of all or part of the Premises or of any ownership interest in Mortgagor. Mortgagee may sell, assign or grant participations in any of the Indebtedness and any related obligations, including, without limit, this Mortgage. Mortgagee may provide information relating to this Mortgage or relating to Mortgagor to Mortgagee's parent, affiliates, subsidiaries, service providers, assignees and participants. In the event of foreclosure of this Mortgage or the enforcement by Mortgagee of any other remedies under this Mortgage, Mortgagor waives any right otherwise available in respect to marshalling of assets which secure the Indebtedness or to require Mortgagee to pursue its remedies against any other assets or any other party. Upon full and final payment of the Indebtedness and performance by Mortgagor of all its other obligations under this Mortgage, except as otherwise provided in paragraphs 10(f) and 20, the parties shall automatically each fully and finally release and discharge the other from any claim, liability or obligation in connection with this Mortgage and the Indebtedness. This Mortgage shall in all respects be governed by and construed in accordance with the laws of the State of Florida.

15. Promptly upon the request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all further documents, and do all further acts as Mortgagee may require in its sole discretion to confirm and protect the lien of this Mortgage or otherwise to accomplish the purposes of this Mortgage.

16. Nothing in this Mortgage shall be construed to preclude Mortgagee from pursuing any available remedy provided by law for the collection of the Indebtedness or enforcement of its rights upon an Event of Default. Nothing in this Mortgage shall reduce or release any rights or security interests of Mortgagee contained in any existing agreement between Borrower, Mortgagor, or any guarantor and Mortgagee. No waiver of default or consent to any act by Mortgagor shall be effective unless in writing and signed by an authorized officer of Mortgagee. No waiver of any default or forbearance on the part of Mortgagee in enforcing any of its rights under this Mortgage shall operate as a waiver of any other default or of the same default on a future occasion or of any rights.

17. At the sole option of Mortgagee, this Mortgage shall become subordinate, in whole or in part (but not with respect to priority as to insurance proceeds or any eminent domain award) to any or all leases and/or occupancy agreements of the Premises upon the execution by Mortgagee, and recording in the appropriate official county records where the premises are located, of a unilateral declaration to that effect.

18. All notices and demands required or permitted to be given to Mortgagor shall be deemed given when delivered to Mortgagor or when placed in an envelope addressed to Mortgagor at the address above, or at such other address as Mortgagee may have on its records, and deposited, with postage, in a depository under the custody of the United States Postal Service or delivered to an overnight delivery courier. The mailing may be certified, first class or overnight delivery mail.

19. To the extent that any of the Indebtedness is payable upon demand, nothing contained in this Mortgage shall modify the terms and conditions of that Indebtedness nor prevent Mortgagee from making demand, without notice and with or without reason, for immediate payment of any or all of that Indebtedness at any time(s), whether or not an Event of Default has occurred.

20. Notwithstanding any prior revocation, termination or discharge of this Mortgage, (except as to the rights of subsequent intervening bona fide purchasers or lienholders) the effectiveness of this Mortgage shall automatically continue or be reinstated in the event that (a) any payment received or credit given by Mortgagee in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of trust funds, or otherwise under any applicable law, in which case this Mortgage shall be enforceable as if the returned, disgorged or rescinded payment or credit had not been received or given, whether or not Mortgagee relied upon this payment or credit or changed its position as a consequence of it; or (b) any liability is sought to be imposed against Mortgagee relating to any matter as to which Mortgagor agreed to indemnify Mortgagee under this Mortgage, including, without limit, as to the presence of Hazardous Materials on, in or about the Premises, whether this matter is known or unknown, now or later exists (excluding only matters which arise after any acquisition by Mortgagee of the Premises, by foreclosure, deed in lieu of foreclosure or otherwise, to the extent due to the wrongful act or omission of Mortgagee), in which case this Mortgage shall be enforceable to the extent of all liability, costs and expenses (including, without limit, attorney fees) incurred by Mortgagee as the direct or indirect result thereof. In the event of continuation or reinstatement of this Mortgage, Mortgagor agrees upon demand by Mortgagee to execute and deliver to Mortgagee those documents which Mortgagee determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of Mortgagor to do so shall not affect in any way the reinstatement or continuation. If Mortgagor does not execute and deliver to Mortgagee upon demand such documents, Mortgagee and each employee is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of Mortgagor (with full power of substitution) to execute and deliver such documents in the name and on behalf of Mortgagor.

21. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS MORTGAGE OR THE INDEBTEDNESS.

22. Receiver. If an Event of Default shall occur and then upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of Mortgagee, Mortgagee to the extent permitted by law and without regard to the value or occupancy of the security shall be

entitled as a matter of right to the appointment of a receiver to enter upon and take possession of the Mortgaged Property. The receiver shall collect all revenues, issues, income, profits and rents thereof, pending such proceedings and apply the same as the court may direct. Mortgagor hereby specifically waives the right to object to the appointment of a receiver as described herein and hereby expressly consents that such appointment shall be made as Mortgagee's absolute right and that such appointment may be made without notice to Mortgagor. The receiver shall have all rights and powers permitted under the laws of Florida and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of, to manage and operate, the Mortgaged Property, to collect the revenues, issues, income, profits and rents thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrent therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee. Notwithstanding the appointment of any receiver, trustee or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash, or other instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Mortgagee.

23. Additional provisions, if any:

- a. Leasehold Mortgage Rider. The Leasehold Mortgage Rider attached as Exhibit "C" hereto is incorporated herein by this reference.
- b. Waiver of Notice of Limitation of Indebtedness. Mortgagor hereby waives, on behalf of itself and its successors and assigns, the right to file for recording a notice limiting the maximum principal amount which may be secured by this Mortgage, as provided for in Florida Statutes, 697.04(1)(b), as may be amended from time to time.
- c. After Acquired Property; Time is of the Essence. The lien of this Mortgage will automatically attach, without further act, to all after acquired property of any nature whatsoever attached to, located in, on, or used in the operation of the Mortgaged Property or any part thereof, owned by Mortgagor or in which Mortgagor has an interest, and Mortgagor covenants and warrants that it will have good and absolute title to all of the aforesaid after acquired property it acquires, free of any lien or encumbrance. It is specifically agreed that time is of the essence of this Mortgage and that no waiver of any obligation hereunder or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the instrument secured hereby.
- d. Legal Description Indemnification. Mortgagor has read and does hereby approve the legal description of the Premises which is the subject of this Mortgage as set forth in Exhibit "A" attached hereto, and hereby indemnifies Mortgagee, its successors or assigns, and their attorneys with respect to any liability which might arise as a consequence of Section 697.10, Florida Statutes, or any successors or amendments thereto.

- e. Limitation. Notwithstanding the principal amount of the Indebtedness secured by this Mortgage, recovery of principal under this Mortgage shall be limited to \$11,850,000; provided, however, such limitation shall in no way be deemed to limit, in any manner whatsoever, Mortgagee's ability to recover: (i) any unpaid or past-due interest (including any default interest or interest on any judgment obtained by Mortgagee against Mortgagor) in connection with the Note and this Mortgage; (ii) protective advances made by Mortgagee in accordance with the Note and this Mortgage; or (iii) amounts incurred by Mortgagee in connection with the occurrence of an Event of Default hereunder, including, without limitation, attorneys' fees and costs, court costs and costs of collection.


IN WITNESS WHEREOF, Mortgagor has signed and delivered this Mortgage the day and year first written above.

RECORDING REQUIREMENTS: Two witnesses are required for each Mortgagor. Type or print name of each Mortgagor, Witness and Notary beneath the respective signature line.

WITNESSES:

MORTGAGOR(S)

OCEAN 4660, LLC


SIGNATURE OF Michael D. Malaga

SIGNATURE OF

By: 
SIGNATURE OF HANNA-KARCHO-POLSELLI

Its: Managing Member
TITLE (IF APPLICABLE)

STATE OF MICHIGAN

COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me on January 3, 2008 by Hanna-Karcho-Polselli, the Managing Member of Ocean 4660, LLC, a Florida limited liability company, on behalf of said entity, who is known to me.



Notary Public, Oakland County, Michigan
My commission expires: 4/26/2012

EXHIBIT "A"

Legal Description

Land situated in the County of Broward, State of Florida, described as follows:

PARCEL A:

Lots 11, 12, 13, 14, 15, 16, 17, 18 and 19, in Block 10, and Lots 14, 15, 16 and 17, in Block 9, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida; ALSO all of that parcel of land, if any, bounded on the West by the Easterly line of said Lots 14, 15, 16 and 17, of said Block 9, bounded on the East by the Atlantic Ocean, bounded on the North by the North line of Lot 17 of said Block 9, extended Easterly to the Atlantic Ocean and bounded on the South by the South line of Lot 14 of said Block 9, extended Easterly to the Atlantic Ocean, said land fronting the Atlantic Ocean.

Land situated in the County of Broward, State of Florida, described as follows:

PARCEL B:

Lots 20 and 21, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida.

PARCEL C:

Lots 9, 10, 22, 23 and 24, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida.

Tax Identification Nos.: 19318-01-06100 and 19318-01-07000 (Parcel A)
 19318-01-07300 (Parcel B)
 19318-01-06800 and 19318-01-06820 (Parcel C)

Commonly Known As: 4660 N. Ocean Drive, Lauderdale by the Sea, Florida

EXHIBIT "B"

Permitted Encumbrances

1. Restrictions, dedications and easements as contained on the Plat of LAUDERDALE BY THE SEA, as recorded in the Plat thereof, recorded in Plat Book 6, Page 2.
2. Easement in favor of Selkirk Communications, Inc., recorded April 10, 1987 in Official Records Book 14336, Page 999.
3. Perpetual Beach Storm Damage Reduction Easement recorded January 9, 2002 in Official Records Book 32599, Page 1521.
4. Rights, if any, of the public to use as a public beach or recreation area any part of the land lying between the body of water abutting the subject property and the natural line of vegetation, bluff, extreme high water line, or other apparent boundary line separating the publicly used area from the upland private area.
5. Any land described in Exhibit A, which is artificially filled land in what was formerly navigable waters, is subject to the rights of the United States government, arising by said government's control over navigable waters involving navigation and commerce.
6. The Lease and Sublease (as defined on Exhibit "C" to this Mortgage), as to Parcel C only.

EXHIBIT "C"

Leasehold Mortgage Rider

1. **Incorporation by Reference.** The Continuing Collateral Mortgage to which this Exhibit "C" is attached, incorporated and a part (the "Mortgage" and capitalized terms not defined in this Exhibit "C" shall have the meanings ascribed to them in the Mortgage) constitutes, with respect to the property described as Parcel C on Exhibit A attached to the Mortgage (the "Leased Property"), an encumbrance against the leasehold premises and leasehold estate of Mortgagor under the Lease between Antina Investments III, Inc., a Florida corporation as lessor (together with its assigns, the "Landlord"), and Mortgagor (or its predecessor in title) as lessee dated September 1, 1973 and recorded November 6, 1973 in Official Records Book 5515, Page 406 (as it may be amended or assigned, the "Lease"). The Lease is a sublease by Landlord of its leasehold interest in the Leased Property under the Lease between John J. Demko and Margaret H. Demko, his wife, as lessors (together with their successors in title, the "Prime Landlord") and Solar Groves, Inc., a Florida corporation, as lessee, dated September 5, 1957 and recorded September 13, 1957, which lease was subsequently assigned by Solar Groves, Inc. to Landlord, (as it may be amended or assigned, the "Prime Lease"). All right, title and interest of Mortgagor in the leasehold estate under the Lease and all other right, title and interest of Mortgagor in and to the Leased Property, whether now existing or hereafter acquired, including without limitation, under the Lease, is hereby incorporated in the term "Premises" as used in the Mortgage, and is hereby mortgaged, warranted, assigned, transferred, conveyed and set over to Mortgagee as security for the Indebtedness. The term "Premises" as used in the Mortgage and in this Exhibit "C" shall, with respect to the Leased Property only, be limited to the extent of Mortgagor's interest therein under the Lease, together with any and all other right, title and interest of Mortgagor in and to the Premises or Leased Property whether now existing or hereafter acquired. The covenants, warranties and agreements set forth in the first clause of Section 2 of the Mortgage regarding Mortgagor having good and indefeasible title in fee simple to the Premises shall, with respect to the Leased Property only, be limited to good and indefeasible title to the leasehold interest of Mortgagor therein pursuant to the Lease. Nothing in this Rider shall be deemed a consent by Mortgagee to any specific provisions of the Lease or a subordination of the Mortgage to the Lease.

2. **Representation of Mortgagor.** Mortgagor hereby represents and warrants that:

- a. The Lease is unmodified and in full force and effect;
- b. All rents and other charges to be paid by Mortgagor as tenant under the Lease are current;
- c. No uncured default exists under the Lease, nor has there occurred any event that otherwise would permit Landlord to cancel, terminate or otherwise limit the Lease in any manner;

- d. Mortgagor is not aware of any default by Landlord under the Lease or the existence of circumstances which would constitute a default by Landlord under the Lease;
- e. Mortgagor's interest in the Lease is subject to no liens or encumbrances except as set forth on Exhibit "B" to the Mortgage;
- f. Mortgagor owns and holds the Lease and the entire leasehold estate created thereby, has not assigned its rights under the Lease, and has the right under the Lease or has received all appropriate consents required in order for Mortgagor to execute the Mortgage and mortgage Mortgagor's interest thereunder;
- g. Mortgagor enjoys the quiet and peaceful possession of the premises demised under the Lease and Mortgagor agrees to defend the leasehold estate created under the Lease for the entire remainder of the term set forth therein;
- h. Neither the Landlord nor the Mortgagor has any offsets, claims or defenses with respect to the performance of either party's obligations under the Lease, as of the date of the Mortgage, and Mortgagor shall promptly give Mortgagee written notice should any such offset, claim or defense arise;
- i. Mortgagor has not sublet all or any portion of the Leased Property;
- j. To Mortgagor's knowledge, the Prime Lease is unmodified and in full force and effect;
- k. To Mortgagor's knowledge, all rents and other charges to be paid by Landlord as tenant under the Prime Lease are current;
- l. To Mortgagor's knowledge, Landlord is not in default under the Prime Lease, nor has there occurred any event that otherwise would permit Prime Landlord to cancel, terminate or otherwise limit the Prime Lease in any manner;
- m. Mortgagor is not aware of any default by Prime Landlord under the Prime Lease or the existence of circumstances which would constitute a default by Prime Landlord under the Prime Lease; and
- n. To Mortgagor's knowledge, Landlord's interest in the Prime Lease is subject to no liens or encumbrances except as set forth on Exhibit "B" attached to the Mortgage.

3. **Performance.** In no event shall Mortgagor do or permit to be done or omit to do or permit the omission of any act, the doing or omission of which would impair the security of the Mortgage or would constitute grounds for the termination of the Lease or Prime Lease or would entitle Landlord or Prime Landlord to declare a forfeiture or termination of the Lease or Prime Lease or to re-enter the Leased Property. Mortgagor agrees to pay, keep and perform all covenants, conditions, agreements and obligations of the tenant set forth in the Lease, and not to commit or permit any breach thereof.

4. **Notices.** Mortgagor shall promptly (i) send to Mortgagee a copy of any notice from Landlord claiming the existence of a default by Mortgagor under the Lease or the existence of any circumstances which would constitute such a default; (ii) send to Mortgagee a copy of any notice from Prime Landlord claiming the existence of default by Landlord under the Prime Lease; and (iii) notify Mortgagee in writing of the existence of any default by Landlord under the Lease or the existence of any circumstances which would constitute such a default.

5. **Independent Obligation.** Mortgagor agrees that the provisions hereof shall be deemed to be obligations of Mortgagor in addition to Mortgagor's obligations as lessee with respect to similar matters contained in the Lease; provided, however, the inclusion herein of any covenants relating to similar matters under which Mortgagor is obligated under the Lease shall not restrict or limit Mortgagor's duties and obligations to keep and perform promptly all of its covenants as lessee under the Lease, and nothing in the Mortgage shall be construed as requiring the taking of or the omitting to take any action by Mortgagor or Mortgagee which would cause a default under the Lease. Mortgagor further agrees that no release or forbearance of any of Mortgagor's obligations under the Lease, pursuant to the Lease or otherwise, shall release Mortgagor from any of its obligations under the Mortgage.

6. **No Merger.** Mortgagor agrees that so long as the Mortgage is in effect, there shall be no merger of the Lease or any interest therein, nor of the leasehold estate created thereby, with the fee estate in the Leased Property or any portion thereof, by reason of the fact that the Lease may be held directly or indirectly by or for the account of any person who shall hold the fee estate in the Leased Property by any means including foreclosure or deed in lieu of foreclosure. If Mortgagor acquires the fee title or any other estate, title or interest in all or any portion of the Leased Property, the Mortgage shall grant a lien on the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, mortgage or conveyance, become and be subject to the lien granted by the Mortgage. Mortgagor shall notify Mortgagee of any such acquisition by Mortgagor and, on written request by Mortgagee, shall cause to be executed and recorded such further documents or instruments as may in the sole discretion of Mortgagee be necessary or desirable to carry out the intent hereof.

7. **No Modification or Surrender.** Mortgagor agrees that (i) no surrender or termination of the Lease (except a surrender upon the expiration of the term of the Lease or the termination by Landlord pursuant to the provisions thereof) shall be valid or effective, and (ii) neither the Lease nor the terms thereof may be amended, supplemented, surrendered or cancelled, or subordinated to any fee mortgage, to any lease, or to any other interest, either orally or in writing, without the prior written consent of Mortgagee, and Mortgagor agrees that any such action, without the prior written consent of Mortgagee, shall be null and void and of no force or effect and shall constitute an Event of Default under the Mortgage.

8. **Mortgagor's Default.**

- a. If Mortgagor shall default under the Lease, in addition to all the rights and remedies provided for in the Mortgage and available at law, Mortgagee may, at its option, but without any obligation to do so, take any action necessary or desirable to cure such default. Mortgagor shall on demand reimburse Mortgagee for all advances made and expenses incurred by Mortgagee in curing or attempting to

cure any such default (including without limit reasonable attorneys' fees), together with interest thereon at the highest rate applicable to any of the Indebtedness (but not to exceed the maximum rate permitted by applicable law) from the date that an advance is made or expense incurred, to and including the date the same is repaid by Mortgagor and all such sums shall be secured by the Mortgage. Upon receipt by Mortgagee of any written notice of default by Mortgagor under the Lease, Mortgagee may rely thereon and take any action to cure such default even though the existence or nature of the default may be disputed by Mortgagor. Mortgagor hereby grants to Mortgagee, and agrees that Mortgagee shall have, the absolute and immediate right to enter in and upon the Leased Property or any part thereof to such extent and as often as Mortgagee, in its sole discretion, deems necessary or desirable in order to prevent or cure any default by Mortgagor as contemplated hereby. Notwithstanding the foregoing or anything to the contrary contained in the Mortgage, this provision shall not constitute a present assignment of the Lease, and Mortgagee does not hereby assume, nor shall Mortgagee be deemed to assume or otherwise be responsible for, performance of the obligations of Mortgagor as lessee under the Lease. Mortgagee shall be liable for the obligations of Mortgagor as lessee under the Lease only after Mortgagee has acquired, by foreclosure or otherwise, and is holding, all of Mortgagor's right, title and interest in the Lease and possession of the Leased Property.

- b. Any breach or default by Mortgagor of any term, condition or covenant contained in the Lease or the occurrence of any circumstances which would permit Landlord to cancel, terminate or otherwise limit the Lease in any manner, and the continuance of any of the foregoing beyond the expiration of any applicable notice and cure period, shall constitute an Event of Default under the Mortgage.

9. **Estoppel Certificate.** Mortgagor shall promptly furnish to Mortgagee all information that Mortgagee may request concerning the performance by Mortgagor of its obligations under the Lease. Promptly upon demand by Mortgagee, Mortgagor shall obtain from Landlord and furnish to Mortgagee estoppel certificates executed by Landlord, respectively stating, among other things, the date through which rent has been paid under the applicable Lease, whether or not there are any defaults under the Lease, and the nature of such defaults.

10. **New Lease.** Mortgagor agrees that, if the Lease is for any reason whatsoever terminated prior to the natural expiration of its term and Mortgagee or its designee shall acquire from Landlord a new lease or leases of the Leased Property or any part thereof, Mortgagor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby.

11. **Notice of Bankruptcy.** Mortgagor shall promptly notify Mortgagee of any filing by or against Landlord or Mortgagor of a petition under the Bankruptcy Code, Title 11 of the United States Code (as the same may be amended or recodified from time to time, together with any successor or similar statute, the "Bankruptcy Code"), setting forth any information available to Mortgagor including the date of such filing, the court in which such petition was filed, and the relief sought therein. Mortgagor shall promptly deliver to Mortgagee any and all notices,

summons, pleadings, applications and other documents received by Mortgagor in connection with any such petition and any proceedings relating thereto.

12. **Restriction on Actions under Bankruptcy Code.** Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion in respect of the Leased Property, including the Lease, in any bankruptcy case filed by or against Landlord, without the prior written consent of Mortgagee. If any action, proceeding, motion or notice shall be commenced or filed under the Bankruptcy Code in respect of Landlord or the Leased Property, Mortgagee shall have the option, to the exclusion of Mortgagor, exercisable upon notice from Mortgagee to Mortgagor, to conduct and control any such litigation with counsel of Mortgagee's choice. Mortgagee may proceed in its own name, or in the name of Mortgagor in connection with any such litigation, and Mortgagor agrees to execute any and all powers, authorizations, consents or other documents required by Mortgagee in connection therewith. Mortgagor shall, upon demand, pay to Mortgagee all costs and expenses (including reasonable attorneys' fees) paid or incurred by Mortgagee in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Mortgagor as aforesaid shall be secured by the Mortgage and shall be added to the Indebtedness. Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Lease in any bankruptcy case filed by or against Landlord under the Bankruptcy Code without the prior written consent of Mortgagee.

13. **Bankruptcy of Landlord.**

- a. Mortgagor acknowledges that, pursuant to Section 365 of the Bankruptcy Code, it is possible that a trustee in bankruptcy of Landlord, or Landlord as debtor-in-possession, could reject the Lease; in such event, Mortgagor, as tenant, would have the election described in Section 365(h) of the Bankruptcy Code (which election, as the same may be amended, revised or recodified from time to time, and together with any comparable right under any other state or federal law relating to bankruptcy, reorganization or other relief for debtors, whether now or hereafter in effect, is herein called the "Election") to treat the Lease as terminated by such rejection or, in the alternative, to remain in possession for the balance of the term of such Lease and any renewal or extension thereof that is enforceable by the tenant under applicable non-bankruptcy law. Mortgagor covenants that it will not suffer or permit the termination of the Lease by exercise of the Election or otherwise without the prior written consent of Mortgagee. Mortgagor acknowledges that, since the Lease is a primary part of Mortgagee's security for the obligations secured under the Mortgage, Mortgagee does not anticipate that it would consent to termination of the Lease and shall not under any circumstances be obligated to give such consent. Mortgagor further acknowledges that any Election made without the consent of Mortgagee shall be null and void and of no force or effect.
- b. In order to secure the covenants made herein and as security for the other obligations secured under the Mortgage, Mortgagor assigns the Election and all of Mortgagor's other rights and remedies at any time arising under or pursuant to the Bankruptcy Code, including without limitation, all of Mortgagor's rights to

remain in possession of the Leased Property, to Mortgagee. Mortgagor acknowledges and agrees that Mortgagee may use the Election at any time in order to protect and preserve the rights and interests of Mortgagee under the Mortgage, since exercise of the Election in favor of terminating the Lease would constitute waste under the Mortgage.

- c. Mortgagor acknowledges and agrees that the Election is in the nature of a remedy and is not a property interest which Mortgagor can separate from the Lease. Therefore, Mortgagor agrees that exercise of the Election in favor of preserving the right to possession under the Lease shall not be deemed to constitute a taking or sale of the Leased Property by Mortgagee and shall not entitle Mortgagor to any credit against the Indebtedness.
- d. Mortgagor acknowledges and agrees that, in the event the Election is exercised in favor of Mortgagor remaining in possession, Mortgagor's resulting right to possession and use of (and rents and profits from) the Leased Property, as adjusted by the effect of Section 365 of the Bankruptcy Code, whether or not all or any part of the Leased Property has been subleased, shall then be part of the Leased Property and shall be subject to the lien of the Mortgage. Mortgagor acknowledges and agrees that said right to possession and use of the Leased Property as so adjusted shall be equivalent to the leasehold interest which is included in the Leased Property at the time of execution of the Mortgage.
- e. Mortgagor hereby unconditionally mortgages, warrants, assigns, transfers and sets over to Mortgagee all of Mortgagor's claims and rights to the payment of damages arising from any rejection by Landlord of the Lease under the Bankruptcy Code. Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Lease, including, without limitation, the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents and the right to vote with respect to such claim on any bankruptcy plan. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Indebtedness shall have been fully satisfied and discharged. Any amounts received by Mortgagee as damages arising out of the rejection of the Lease shall be applied first to all reasonable costs and expenses of Mortgagee (including, without limitation, reasonable attorneys' fees) incurred in connection with the exercise of any of its rights or remedies related thereto, then to the Indebtedness until it is irrevocably paid and discharged in full, and then to the Mortgagor.
- f. If, after a rejection by Landlord of the Lease, Mortgagor seeks, pursuant to subsection 365(h)(1)(B) of the Bankruptcy Code, to offset against the rent reserved in such Lease the amount of any damages caused by the non-performance by Landlord of any of Landlord's obligations under the Lease, Mortgagor shall, thirty (30) days prior to effecting such offset, notify Mortgagee in writing of its intent to do so, setting forth the amounts proposed to be so offset

the notice shall have been given, subject to the performance by Mortgagee of the agreement provided for in clause (ii) of the preceding sentence.

- b. Effective upon the entry of an order for relief in respect of Mortgagor under the Bankruptcy Code, Mortgagor hereby assigns and transfers to Mortgagee a non-exclusive right to apply to the Bankruptcy Court for an order extending the period during which the Lease may be rejected or assumed.



Security Agreement
(All Assets)

As of January 3, 2008 for value received, the undersigned ("Debtor") pledges, assigns and grants to Comerica Bank ("Bank"), whose address is 39200 Six Mile Road, Livonia, Michigan 48152, Attention: Commercial Loan Documentation, Mail Code 7578, a continuing security interest and lien (any pledge, assignment, security interest or other lien arising hereunder is sometimes referred to herein as a "security interest") in the Collateral (as defined below) to secure payment when due, whether by stated maturity, demand, acceleration or otherwise, of all existing and future indebtedness ("Indebtedness") to the Bank of N/A ("Borrower") and/or Debtor. Indebtedness includes without limit any and all obligations or liabilities of the Borrower and/or Debtor to the Bank, whether absolute or contingent, direct or indirect, voluntary or involuntary, liquidated or unliquidated, joint or several, known or unknown; any and all obligations or liabilities for which the Borrower and/or Debtor would otherwise be liable to the Bank were it not for the invalidity or unenforceability of them by reason of any bankruptcy, insolvency or other law, or for any other reason; any and all amendments, modifications, renewals and/or extensions of any of the above; all costs incurred by Bank in establishing, determining, continuing, or defending the validity or priority of its security interest, or in pursuing its rights and remedies under this Agreement or under any other agreement between Bank and Borrower and/or Debtor or in connection with any proceeding involving Bank as a result of any financial accommodation to Borrower and/or Debtor; and all other costs of collecting Indebtedness, including without limit attorneys fees. Debtor agrees to pay Bank all such costs incurred by the Bank, immediately upon demand, and until paid all costs shall bear interest at the highest per annum rate applicable to any of the Indebtedness, but not in excess of the maximum rate permitted by law. Any reference in this Agreement to attorneys fees shall be deemed a reference to reasonable fees, costs, and expenses of both in-house and outside counsel and paralegals, whether inside or outside counsel is used, whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorneys fees or court costs are incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding or otherwise. Debtor further covenants, agrees, represents and warrants as follows:

1. **Collateral** shall mean all personal property of Debtor including, without limitation, all of the following property Debtor now or later owns or has an interest in, wherever located:
 - all Accounts Receivable (for purposes of this Agreement, "Accounts Receivable" consists of all accounts, general intangibles, chattel paper (including without limit electronic chattel paper and tangible chattel paper), contract rights, deposit accounts, documents, instruments and rights to payment evidenced by chattel paper, documents or instruments, health care insurance receivables; commercial tort claims, letters of credit, letter of credit rights, supporting obligations, and rights to payment for money or funds advanced or sold),
 - all Inventory,
 - all Equipment and Fixtures,
 - all Software (for purposes of this Agreement, "Software" consists of all (i) computer programs and supporting information provided in connection with a transaction relating to the program, and (ii) computer programs embedded in goods and any supporting information provided in connection with a transaction relating to the program whether or not the program is associated with the goods in such a manner that it customarily is considered part of the goods, and whether or not, by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods, and whether or not the program is embedded in goods that consist solely of the medium in which the program is embedded),
 - all investment property (including, without limit, securities, securities entitlements, and financial assets),
 - specific items listed below and/or on attached Schedule A, if any, is/are also included in Collateral:



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- all goods, instruments, (including, without limit, promissory notes), documents (including, without limit, negotiable documents), policies and certificates of insurance, deposit accounts, and money or other property (except real property which is not a fixture) which are now or later in possession of Bank, or as to which Bank now or later controls possession by documents or otherwise, and
 - all additions, attachments, accessions, parts, replacements, substitutions, renewals, interest, dividends, distributions, rights of any kind (including but not limited to stock splits, stock rights, voting and preferential rights), products, and proceeds of or pertaining to the above including, without limit, cash or other property which were proceeds and are recovered by a bankruptcy trustee or otherwise as a preferential transfer by Debtor.

In the definition of Collateral, a reference to a type of collateral shall not be limited by a separate reference to a more specific or narrower type of that collateral.

2. Warranties, Covenants and Agreements. Debtor warrants, covenants and agrees as follows:

- 2.1 Debtor shall furnish to Bank, in form and at intervals as Bank may request, any information Bank may reasonably request and allow Bank to examine, inspect, and copy any of Debtor's books and records. Debtor shall, at the request of Bank, mark its records and the Collateral to clearly indicate the security interest of Bank under this Agreement.
- 2.2 At the time any Collateral becomes, or is represented to be, subject to a security interest in favor of Bank, Debtor shall be deemed to have warranted that (a) Debtor is the lawful owner of the Collateral and has the right and authority to subject it to a security interest granted to Bank; (b) none of the Collateral is subject to any security interest other than that in favor of Bank; (c) there are no financing statements on file, other than in favor of Bank; (d) no person, other than Bank, has possession or control (as defined in the Uniform Commercial Code) of any Collateral of such nature that perfection of a security interest may be accomplished by control; and (e) Debtor acquired its rights in the Collateral in the ordinary course of its business.
- 2.3 Debtor will keep the Collateral free at all times from all claims, liens, security interests and encumbrances other than those in favor of Bank. Debtor will not, without the prior written consent of Bank, sell, transfer or lease, or permit to be sold, transferred or leased, any or all of the Collateral, except (where inventory is pledged as Collateral) for inventory in the ordinary course of its business and will not return any inventory to its supplier. Bank or its representatives may at all reasonable times inspect the Collateral and may enter upon all premises where the Collateral is kept or might be located.
- 2.4 Debtor will do all acts and will execute or cause to be executed all writings requested by Bank to establish, maintain and continue an exclusive, perfected and first security interest of Bank in the Collateral. Debtor agrees that Bank has no obligation to acquire or perfect any lien on or security interest in any asset(s), whether realty or personalty, to secure payment of the Indebtedness, and Debtor is not relying upon assets in which the Bank may have a lien or security interest for payment of the Indebtedness.
- 2.5 Debtor will pay within the time that they can be paid without interest or penalty all taxes, assessments and similar charges which at any time are or may become a lien, charge, or encumbrance upon any Collateral, except to the extent contested in good faith and bonded in a manner satisfactory to Bank. If Debtor fails to pay any of these taxes, assessments, or other charges in the time provided above, Bank has the option (but not the obligation) to do so and Debtor agrees to repay all amounts so expended by Bank immediately upon demand, together with interest at the highest lawful default rate which could be charged by Bank on any Indebtedness.
- 2.6 Debtor will keep the Collateral in good condition and will protect it from loss, damage, or deterioration from any cause. Debtor has and will maintain at all times (a) with respect to the Collateral, insurance under an "all risk" policy against fire and other risks customarily insured against, and (b) public liability insurance and other insurance as may be required by law or reasonably required by Bank, all of which

insurance shall be in amount, form and content, and written by companies as may be satisfactory to Bank, containing a lender's loss payable endorsement acceptable to Bank. Debtor will deliver to Bank immediately upon demand evidence satisfactory to Bank that the required insurance has been procured. If Debtor fails to maintain satisfactory insurance, Bank has the option (but not the obligation) to do so and Debtor agrees to repay all amounts so expended by Bank immediately upon demand, together with interest at the highest lawful default rate which could be charged by Bank on any indebtedness.

- 2.7 On each occasion on which Debtor evidences to Bank the account balances on and the nature and extent of the Accounts Receivable, Debtor shall be deemed to have warranted that except as otherwise indicated (a) each of those Accounts Receivable is valid and enforceable without performance by Debtor of any act; (b) each of those account balances are in fact owing, (c) there are no setoffs, recoupments, credits, contra accounts, counterclaims or defenses against any of those Accounts Receivable, (d) as to any Accounts Receivable represented by a note, trade acceptance, draft or other instrument or by any chattel paper or document, the same have been endorsed and/or delivered by Debtor to Bank, (e) Debtor has not received with respect to any Account Receivable, any notice of the death of the related account debtor, nor of the dissolution, liquidation, termination of existence, insolvency, business failure, appointment of a receiver for, assignment for the benefit of creditors by, or filing of a petition in bankruptcy by or against, the account debtor, and (f) as to each Account Receivable, except as may be expressly permitted by Bank to the contrary in another document, the account debtor is not an affiliate of Debtor, the United States of America or any department, agency or instrumentality of it, or a citizen or resident of any jurisdiction outside of the United States. Debtor will do all acts and will execute all writings requested by Bank to perform, enforce performance of, and collect all Accounts Receivable. Debtor shall neither make nor permit any modification, compromise or substitution for any Account Receivable without the prior written consent of Bank. Bank may at any time and from time to time verify Accounts Receivable directly with account debtors or by other methods acceptable to Bank without notifying Debtor. Debtor agrees, at Bank's request, to arrange or cooperate with Bank in arranging for verification of Accounts Receivable.
- 2.8 Debtor at all times shall be in strict compliance with all applicable laws, including without limit any laws, ordinances, directives, orders, statutes, or regulations an object of which is to regulate or improve health, safety, or the environment ("Environmental Laws").
- 2.9 If Bank, acting in its sole discretion, redelivers Collateral to Debtor or Debtor's designee for the purpose of (a) the ultimate sale or exchange thereof; or (b) presentation, collection, renewal, or registration of transfer thereof; or (c) loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with it preliminary to sale or exchange; such redelivery shall be in trust for the benefit of Bank and shall not constitute a release of Bank's security interest in it or in the proceeds or products of it unless Bank specifically so agrees in writing. If Debtor requests any such redelivery, Debtor will deliver with such request a duly executed financing statement in form and substance satisfactory to Bank. Any proceeds of Collateral coming into Debtor's possession as a result of any such redelivery shall be held in trust for Bank and immediately delivered to Bank for application on the Indebtedness. Bank may (in its sole discretion) deliver any or all of the Collateral to Debtor, and such delivery by Bank shall discharge Bank from all liability or responsibility for such Collateral. Bank, at its option, may require delivery of any Collateral to Bank at any time with such endorsements or assignments of the Collateral as Bank may request.
- 2.10 At any time and without notice, Bank may, as to Collateral other than Equipment, Fixtures or Inventory; (a) cause any or all of such Collateral to be transferred to its name or to the name of its nominees; (b) receive or collect by legal proceedings or otherwise all dividends, interest, principal payments and other sums and all other distributions at any time payable or receivable on account of such Collateral, and hold the same as Collateral, or apply the same to the Indebtedness, the manner and distribution of the application to be in the sole discretion of Bank; (c) enter into any extension, subordination, reorganization, deposit, merger or consolidation agreement or any other agreement relating to or affecting such Collateral, and deposit or surrender control of such Collateral, and accept other property in exchange for such Collateral and hold or apply the property or money so received pursuant to this Agreement; and (d) take such actions in its own name or in Debtor's name as Bank, in its sole discretion, deems necessary or appropriate to establish exclusive control (as defined in the Uniform Commercial Code) over any Collateral of such nature that perfection of the Bank's security interest may be accomplished by control.

- 2.11 Bank may assign any of the Indebtedness and deliver any or all of the Collateral to its assignee, who then shall have with respect to Collateral so delivered all the rights and powers of Bank under this Agreement, and after that Bank shall be fully discharged from all liability and responsibility with respect to Collateral so delivered.
- 2.12 Debtor delivers this Agreement based solely on Debtor's independent investigation of (or decision not to investigate) the financial condition of Borrower and is not relying on any information furnished by Bank. Debtor assumes full responsibility for obtaining any further information concerning the Borrower's financial condition, the status of the Indebtedness or any other matter which the undersigned may deem necessary or appropriate now or later. Debtor waives any duty on the part of Bank, and agrees that Debtor is not relying upon nor expecting Bank to disclose to Debtor any fact now or later known by Bank, whether relating to the operations or condition of Borrower, the existence, liabilities or financial condition of any guarantor of the Indebtedness, the occurrence of any default with respect to the Indebtedness, or otherwise, notwithstanding any effect such fact may have upon Debtor's risk or Debtor's rights against Borrower. Debtor knowingly accepts the full range of risk encompassed in this Agreement, which risk includes without limit the possibility that Borrower may incur Indebtedness to Bank after the financial condition of Borrower, or Borrower's ability to pay debts as they mature, has deteriorated.
- 2.13 Debtor shall defend, indemnify and hold harmless Bank, its employees, agents, shareholders, affiliates, officers, and directors from and against any and all claims, damages, fines, expenses, liabilities or causes of action of whatever kind, including without limit consultant fees, legal expenses, and attorneys fees, suffered by any of them as a direct or indirect result of any actual or asserted violation of any law, including, without limit, Environmental Laws, or of any remediation relating to any property required by any law, including without limit Environmental Laws, INCLUDING ANY CLAIMS, DAMAGES, FINES, EXPENSES, LIABILITIES OR CAUSES OF ACTION OF WHATEVER KIND RESULTING FROM BANK'S OWN NEGLIGENCE, except and to the extent (but only to the extent) caused by Bank's gross negligence or willful misconduct.

3. Collection of Proceeds.

- 3.1 Debtor agrees to collect and enforce payment of all Collateral until Bank shall direct Debtor to the contrary. Immediately upon notice to Debtor by Bank and at all times after that, Debtor agrees to fully and promptly cooperate and assist Bank in the collection and enforcement of all Collateral and to hold in trust for Bank all payments received in connection with Collateral and from the sale, lease or other disposition of any Collateral, all rights by way of suretyship or guaranty and all rights in the nature of a lien or security interest which Debtor now or later has regarding Collateral. Immediately upon and after such notice, Debtor agrees to (a) endorse to Bank and immediately deliver to Bank all payments received on Collateral or from the sale, lease or other disposition of any Collateral or arising from any other rights or interests of Debtor in the Collateral, in the form received by Debtor without commingling with any other funds, and (b) immediately deliver to Bank all property in Debtor's possession or later coming into Debtor's possession through enforcement of Debtor's rights or interests in the Collateral. Debtor irrevocably authorizes Bank or any Bank employee or agent to endorse the name of Debtor upon any checks or other items which are received in payment for any Collateral, and to do any and all things necessary in order to reduce these items to money. Bank shall have no duty as to the collection or protection of Collateral or the proceeds of it, nor as to the preservation of any related rights, beyond the use of reasonable care in the custody and preservation of Collateral in the possession of Bank. Debtor agrees to take all steps necessary to preserve rights against prior parties with respect to the Collateral. Nothing in this Section 3.1 shall be deemed a consent by Bank to any sale, lease or other disposition of any Collateral.
- 3.2 Debtor agrees that immediately upon Bank's request (whether or not any Event of Default exists) the Indebtedness shall be on a "remittance basis" in accordance with the following. In connection therewith, Debtor shall at its sole expense establish and maintain (and Bank, at Bank's option may establish and maintain at Debtor's expense):
- (a) A United States Post Office lock box (the "Lock Box"), to which Bank shall have exclusive access and control. Debtor expressly authorizes Bank, from time to time, to remove contents from the Lock Box, for disposition in accordance with this Agreement. Debtor agrees to notify all account

debtors and other parties obligated to Debtor that all payments made to Debtor (other than payments by electronic funds transfer) shall be remitted, for the credit of Debtor, to the Lock Box, and Debtor shall include a like statement on all invoices; and

- (b) A non-interest bearing deposit account with Bank which shall be titled as designated by Bank (the "Cash Collateral Account") to which Bank shall have exclusive access and control. Debtor agrees to notify all account debtors and other parties obligated to Debtor that all payments made to Debtor by electronic funds transfer shall be remitted to the Cash Collateral Account, and Debtor, at Bank's request, shall include a like statement on all invoices. Debtor shall execute all documents and authorizations as required by Bank to establish and maintain the Lock Box and the Cash Collateral Account.

- 3.3 All items or amounts which are remitted to the Lock Box, to the Cash Collateral Account, or otherwise delivered by or for the benefit of Debtor to Bank on account of partial or full payment of, or with respect to, any Collateral shall, at Bank's option, (i) be applied to the payment of the Indebtedness, whether then due or not, in such order or at such time of application as Bank may determine in its sole discretion, or, (ii) be deposited to the Cash Collateral Account. Debtor agrees that Bank shall not be liable for any loss or damage which Debtor may suffer as a result of Bank's processing of items or its exercise of any other rights or remedies under this Agreement, including without limitation indirect, special or consequential damages, loss of revenues or profits, or any claim, demand or action by any third party arising out of or in connection with the processing of items or the exercise of any other rights or remedies under this Agreement. Debtor agrees to indemnify and hold Bank harmless from and against all such third party claims, demands or actions, and all related expenses or liabilities, including, without limitation, attorneys fees and INCLUDING ANY CLAIMS, DAMAGES, FINES, EXPENSES, LIABILITIES OR CAUSES OF ACTION OF WHATEVER KIND RESULTING FROM BANK'S OWN NEGLIGENCE, except and to the extent (but only to the extent) caused by Bank's gross negligence or willful misconduct.

4. Defaults, Enforcement and Application of Proceeds.

- 4.1 Upon the occurrence of any of the following events (each an "Event of Default"), Debtor shall be in default under this Agreement:
- (a) Any failure to pay the Indebtedness or any other indebtedness when due, or such portion of it as may be due, by acceleration or otherwise; or
 - (b) Any failure or neglect to comply with, or breach of or default under, any term of this Agreement, or any other agreement or commitment between Borrower, Debtor, or any guarantor of any of the Indebtedness ("Guarantor") and Bank; or
 - (c) Any warranty, representation, financial statement, or other information made, given or furnished to Bank by or on behalf of Borrower, Debtor, or any Guarantor shall be, or shall prove to have been, false or materially misleading when made, given, or furnished; or
 - (d) Any loss, theft, damage or destruction to or of any Collateral involving an amount in excess of \$100,000, or the issuance or filing of any attachment, levy, garnishment or the commencement of any proceeding in connection with any Collateral or of any other judicial process of, upon or in respect of Borrower, Debtor, any Guarantor, or any Collateral; or
 - (e) Sale or other disposition by Debtor, of any substantial portion of its assets or property or voluntary suspension of the transaction of business by Borrower, Debtor, or any Guarantor, or death, dissolution, termination of existence, merger, consolidation, insolvency, business failure, or assignment for the benefit of creditors of or by Borrower, Debtor, or any Guarantor; or commencement of any proceedings under any state or federal bankruptcy or insolvency laws or laws for the relief of debtors by or against Borrower, Debtor, or any Guarantor; or the appointment of a receiver, trustee, court appointee, sequestrator or otherwise, for all or any part of the property of Borrower, Debtor, or any Guarantor; or

- (f) Bank deems the margin of Collateral insufficient or itself insecure, in good faith believing that the prospect of payment of the Indebtedness or performance of this Agreement is impaired or shall fear deterioration, removal, or waste of Collateral; or
- (g) An event of default shall occur under any instrument, agreement or other document evidencing, securing or otherwise relating to any of the Indebtedness.

4.2 Upon the occurrence of any Event of Default, Bank may at its discretion and without prior notice to Debtor declare any or all of the Indebtedness to be immediately due and payable, and shall have and may exercise any right or remedy available to it including, without limitation, any one or more of the following rights and remedies:

- (a) Exercise all the rights and remedies upon default, in foreclosure and otherwise, available to secured parties under the provisions of the Uniform Commercial Code and other applicable law;
- (b) Institute legal proceedings to foreclose upon the lien and security interest granted by this Agreement, to recover judgment for all amounts then due and owing as Indebtedness, and to collect the same out of any Collateral or the proceeds of any sale of it;
- (c) Institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any or all Collateral; and/or
- (d) Personally or by agents, attorneys, or appointment of a receiver, enter upon any premises where Collateral may then be located, and take possession of all or any of it and/or render it unusable; and without being responsible for loss or damage to such Collateral, hold, operate, sell, lease, or dispose of all or any Collateral at one or more public or private sales, leaseings or other dispositions, at places and times and on terms and conditions as Bank may deem fit, without any previous demand or advertisement; and except as provided in this Agreement, all notice of sale, lease or other disposition, and advertisement, and other notice or demand, any right or equity of redemption, and any obligation of a prospective purchaser or lessee to inquire as to the power and authority of Bank to sell, lease, or otherwise dispose of the Collateral or as to the application by Bank of the proceeds of sale or otherwise, which would otherwise be required by, or available to Debtor under, applicable law are expressly waived by Debtor to the fullest extent permitted.

At any sale pursuant to this Section 4.2, whether under the power of sale, by virtue of judicial proceedings or otherwise, it shall not be necessary for Bank or a public officer under order of a court to have present physical or constructive possession of Collateral to be sold. The recitals contained in any conveyances and receipts made and given by Bank or the public officer to any purchaser at any sale made pursuant to this Agreement shall, to the extent permitted by applicable law, conclusively establish the truth and accuracy of the matters stated (including, without limit, as to the amounts of the principal of and interest on the Indebtedness, the accrual and nonpayment of it and advertisement and conduct of the sale); and all prerequisites to the sale shall be presumed to have been satisfied and performed. Upon any sale of any Collateral, the receipt of the officer making the sale under judicial proceedings or of Bank shall be sufficient discharge to the purchaser for the purchase money, and the purchaser shall not be obligated to see to the application of the money. Any sale of any Collateral under this Agreement shall be a perpetual bar against Debtor with respect to that Collateral. At any sale or other disposition of the Collateral pursuant to this Section 4.2, Bank disclaims all warranties which would otherwise be given under the Uniform Commercial Code, including without limit a disclaimer of any warranty relating to title, possession, quiet enjoyment or the like, and Bank may communicate these disclaimers to a purchaser at such disposition. This disclaimer of warranties will not render the sale commercially unreasonable.

4.3 Debtor shall at the request of Bank, notify the account debtors or obligors of Bank's security interest in the Collateral and direct payment of it to Bank. Bank may, itself, upon the occurrence of any Event of Default so notify and direct any account debtor or obligor. At the request of Bank, whether or not an Event of Default shall have occurred, Debtor shall immediately take such actions as the Bank shall request to

establish exclusive control (as defined in the Uniform Commercial Code) by Bank over any Collateral which is of such a nature that perfection of a security interest may be accomplished by control.

- 4.4 The proceeds of any sale or other disposition of Collateral authorized by this Agreement shall be applied by Bank first upon all expenses authorized by the Uniform Commercial Code and all reasonable attorneys fees and legal expenses incurred by Bank; the balance of the proceeds of the sale or other disposition shall be applied in the payment of the Indebtedness, first to interest, then to principal, then to remaining Indebtedness and the surplus, if any, shall be paid over to Debtor or to such other person(s) as may be entitled to it under applicable law. Debtor shall remain liable for any deficiency, which it shall pay to Bank immediately upon demand. Debtor agrees that Bank shall be under no obligation to accept any noncash proceeds in connection with any sale or disposition of Collateral unless failure to do so would be commercially unreasonable. If Bank agrees in its sole discretion to accept noncash proceeds (unless the failure to do so would be commercially unreasonable), Bank may ascribe any commercially reasonable value to such proceeds. Without limiting the foregoing, Bank may apply any discount factor in determining the present value of proceeds to be received in the future or may elect to apply proceeds to be received in the future only as and when such proceeds are actually received in cash by Bank.
- 4.5 Nothing in this Agreement is intended, nor shall it be construed, to preclude Bank from pursuing any other remedy provided by law or in equity for the collection of the Indebtedness or for the recovery of any other sum to which Bank may be entitled for the breach of this Agreement by Debtor. Nothing in this Agreement shall reduce or release in any way any rights or security interests of Bank contained in any existing agreement between Borrower, Debtor, or any Guarantor and Bank.
- 4.6 No waiver of default or consent to any act by Debtor shall be effective unless in writing and signed by an authorized officer of Bank. No waiver of any default or forbearance on the part of Bank in enforcing any of its rights under this Agreement shall operate as a waiver of any other default or of the same default on a future occasion or of any rights.
- 4.7 Debtor (a) irrevocably appoints Bank or any agent of Bank (which appointment is coupled with an interest) the true and lawful attorney of Debtor (with full power of substitution) to act in the name, place and stead of, and at the expense of, Debtor and (b) authorizes Bank or any agent of Bank, in its own name, at Debtor's expense, to do any of the following, as Bank, in its sole discretion, deems appropriate:
- (i) to demand, receive, sue for, and give receipts or acquittances for any moneys due or to become due on any Collateral and to endorse any item representing any payment on or proceeds of the Collateral;
 - (ii) to execute and file in the name of and on behalf of Debtor all financing statements or other filings deemed necessary or desirable by Bank to evidence, perfect, or continue the security interests granted in this Agreement; and
 - (iii) to do and perform any act on behalf of Debtor permitted or required under this Agreement.
- 4.8 Upon the occurrence of an Event of Default, Debtor also agrees, upon request of Bank, to assemble the Collateral and make it available to Bank at any place designated by Bank which is reasonably convenient to Bank and Debtor.
- 4.9 The following shall be the basis for any finder of fact's determination of the value of any Collateral which is the subject matter of a disposition giving rise to a calculation of any surplus or deficiency under Section 9-615 (f) of the Uniform Commercial Code (as in effect on or after July 1, 2001): (a) the Collateral which is the subject matter of the disposition shall be valued in an "as is" condition as of the date of the disposition, without any assumption or expectation that such Collateral will be repaired or improved in any manner; (b) the valuation shall be based upon an assumption that the transferee of such Collateral desires a resale of the Collateral for cash promptly (but no later than 30 days) following the disposition; (c) all reasonable closing costs customarily borne by the seller in commercial sales transactions relating to property similar to such Collateral shall be deducted including, without limitation, brokerage commissions, tax prorations, attorneys' fees, whether inside or outside counsel is used, and marketing costs; (d) the value of the Collateral which is the subject matter of the disposition shall be further

discounted to account for any estimated holding costs associated with maintaining such Collateral pending sale (to the extent not accounted for in (c) above), and other maintenance, operational and ownership expenses; and (e) any expert opinion testimony given or considered in connection with a determination of the value of such Collateral must be given by persons having at least 5 years experience in appraising property similar to the Collateral and who have conducted and prepared a complete written appraisal of such Collateral taking into consideration the factors set forth above. The "value" of any such Collateral shall be a factor in determining the amount of proceeds which would have been realized in a disposition to a transferee other than a secured party, a person related to a secured party or a secondary obligor under Section 9-615(f) of the Uniform Commercial Code.

5. **Miscellaneous.**

- 5.1 Until Bank is advised in writing by Debtor to the contrary, all notices, requests and demands required under this Agreement or by law shall be given to, or made upon, Debtor at the following address:

40800 Woodward Avenue
STREET ADDRESS

<u>Bloomfield Hills</u>	<u>Michigan</u>	<u>48304</u>	<u>Oakland</u>
CITY	STATE	ZIP CODE	COUNTY

- 5.2 Debtor will give Bank not less than 45 days prior written notice of all contemplated changes in Debtor's name, location, chief executive office, principal place of business, and/or location of any Collateral, but the giving of this notice shall not cure any Event of Default caused by this change.
- 5.3 Bank assumes no duty of performance or other responsibility under any contracts contained within the Collateral.
- 5.4 Bank has the right to sell, assign, transfer, negotiate or grant participations or any interest in, any or all of the Indebtedness and any related obligations, including without limit this Agreement. In connection with the above, but without limiting its ability to make other disclosures to the full extent allowable, Bank may disclose all documents and information which Bank now or later has relating to Debtor, the Indebtedness or this Agreement, however obtained. Debtor further agrees that Bank may provide information relating to this Agreement or relating to Debtor or the Indebtedness to the Bank's parent, affiliates, subsidiaries, and service providers.
- 5.5 In addition to Bank's other rights, any indebtedness owing from Bank to Debtor can be set off and applied by Bank on any Indebtedness at any time(s) either before or after maturity or demand without notice to anyone. Any such action shall not constitute acceptance of collateral in discharge of any portion of the Indebtedness.
- 5.6 Debtor, to the extent not expressly prohibited by applicable law, waives any right to require the Bank to: (a) proceed against any person or property; (b) give notice of the terms, time and place of any public or private sale of personal property security held from Borrower or Debtor or any other person, or otherwise comply with the provisions of Section 9-504 of the Uniform Commercial Code in effect prior to July 1, 2001 or its successor provisions thereafter; or (c) pursue any other remedy in the Bank's power. Debtor waives notice of acceptance of this Agreement and presentment, demand, protest, notice of protest, dishonor, notice of dishonor, notice of default, notice of intent to accelerate or demand payment of any Indebtedness, any and all other notices to which the undersigned might otherwise be entitled, and diligence in collecting any Indebtedness, and agree(s) that the Bank may, once or any number of times, modify the terms of any Indebtedness, compromise, extend, increase, accelerate, renew or forbear to enforce payment of any or all Indebtedness, or permit Borrower to incur additional Indebtedness, all without notice to Debtor and without affecting in any manner the unconditional obligation of Debtor under this Agreement. Debtor unconditionally and irrevocably waives each and every defense and setoff of any nature which, under principles of guaranty or otherwise, would operate to impair or diminish in any way the obligation of Debtor under this Agreement, and acknowledges that such waiver is by this reference incorporated into each security agreement, collateral assignment, pledge and/or other document from

Debtor now or later securing the Indebtedness, and acknowledges that as of the date of this Agreement no such defense or setoff exists.

- 5.7 Debtor waives any and all rights (whether by subrogation, indemnity, reimbursement, or otherwise) to recover from Borrower any amounts paid or the value of any Collateral given by Debtor pursuant to this Agreement until such times as all of the Indebtedness has been fully paid.
- 5.8 In the event that applicable law shall obligate Bank to give prior notice to Debtor of any action to be taken under this Agreement, Debtor agrees that a written notice given to Debtor at least ten days before the date of the act shall be reasonable notice of the act and, specifically, reasonable notification of the time and place of any public sale or of the time after which any private sale, lease, or other disposition is to be made, unless a shorter notice period is reasonable under the circumstances. A notice shall be deemed to be given under this Agreement when delivered to Debtor or when placed in an envelope addressed to Debtor and deposited, with postage prepaid, in a post office or official depository under the exclusive care and custody of the United States Postal Service or delivered to an overnight courier. The mailing shall be by overnight courier, certified, or first class mail.
- 5.9 Notwithstanding any prior revocation, termination, surrender, or discharge of this Agreement in whole or in part, the effectiveness of this Agreement shall automatically continue or be reinstated in the event that any payment received or credit given by Bank in respect of the Indebtedness is returned, disgorged, or rescinded under any applicable law, including, without limitation, bankruptcy or insolvency laws, in which case this Agreement, shall be enforceable against Debtor as if the returned, disgorged, or rescinded payment or credit had not been received or given by Bank, and whether or not Bank relied upon this payment or credit or changed its position as a consequence of it. In the event of continuation or reinstatement of this Agreement, Debtor agrees upon demand by Bank to execute and deliver to Bank those documents which Bank determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of Debtor to do so shall not affect in any way the reinstatement or continuation.
- 5.10 This Agreement and all the rights and remedies of Bank under this Agreement shall inure to the benefit of Bank's successors and assigns and to any other holder who derives from Bank title to or an interest in the Indebtedness or any portion of it, and shall bind Debtor and the heirs, legal representatives, successors, and assigns of Debtor. Nothing in this Section 5.10 is deemed a consent by Bank to any assignment by Debtor.
- 5.11 If there is more than one Debtor, all undertakings, warranties and covenants made by Debtor and all rights, powers and authorities given to or conferred upon Bank are made or given jointly and severally.
- 5.12 Except as otherwise provided in this Agreement, all terms in this Agreement have the meanings assigned to them in Article 9 (or, absent definition in Article 9, in any other Article) of the Uniform Commercial Code, as those meanings may be amended, revised or replaced from time to time. "Uniform Commercial Code" means Act No. 174 of the Michigan Public Acts of 1962, as amended, revised or replaced from time to time, including without limit as amended by Act No. 348 of the Michigan Public Acts of 2000. Notwithstanding the foregoing, the parties intend that the terms used herein which are defined in the Uniform Commercial Code have, at all times, the broadest and most inclusive meanings possible. Accordingly, if the Uniform Commercial Code shall in the future be amended or held by a court to define any term used herein more broadly or inclusively than the Uniform Commercial Code in effect on the date of this Agreement, then such term, as used herein, shall be given such broadened meaning. If the Uniform Commercial Code shall in the future be amended or held by a court to define any term used herein more narrowly, or less inclusively, than the Uniform Commercial Code in effect on the date of this Agreement, such amendment or holding shall be disregarded in defining terms used in this Agreement.
- 5.13 No single or partial exercise, or delay in the exercise, of any right or power under this Agreement, shall preclude other or further exercise of the rights and powers under this Agreement. The unenforceability of any provision of this Agreement shall not affect the enforceability of the remainder of this Agreement. This Agreement constitutes the entire agreement of Debtor and Bank with respect to the subject matter of this Agreement. No amendment or modification of this Agreement shall be effective unless the same shall be in writing and signed by Debtor and an authorized officer of Bank. THIS AGREEMENT SHALL

BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF MICHIGAN, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

5.14 To the extent that any of the Indebtedness is payable upon demand, nothing contained in this Agreement shall modify the terms and conditions of that Indebtedness nor shall anything contained in this Agreement prevent Bank from making demand, without notice and with or without reason, for immediate payment of any or all of that Indebtedness at any time(s), whether or not an Event of Default has occurred.

5.15 Debtor represents and warrants that Debtor's exact name is the name set forth in this Agreement. Debtor further represents and warrants the following and agrees that Debtor is, and at all times shall be, located in the following place:

☐ Debtor is an individual, and Debtor is located (as determined pursuant to the Uniform Commercial Code) at Debtor's principal residence which is (street address, state and county or parish): _____

☒ Debtor is a registered organization which is organized under the laws of one of the states comprising the United States (e.g. corporation, limited partnership, registered limited liability partnership or limited liability company), and Debtor is located (as determined pursuant to the Uniform Commercial Code) in the state under the laws of which it was organized, which is state: Florida.

☐ Debtor is a domestic organization which is not a registered organization under the laws of the United States or any state thereof (e.g. general partnership, joint venture, trust, estate or association), and Debtor is located (as determined pursuant to the Uniform Commercial Code) at its sole place of business or, if it has more than one place of business, at its chief executive office, which is (street address, state and county or parish): _____.

☐ Debtor is a registered organization organized under the laws of the United States, and Debtor is located in the state that United States law designates as its location or, if United States law authorizes the Debtor to designate the state for its location, the state designated by Debtor, or if neither of the foregoing are applicable, at the District of Columbia. Based on the foregoing, Debtor is located (as determined pursuant to the Uniform Commercial Code) at (state): _____.

☐ Debtor is a foreign individual or foreign organization or a branch or agency of a bank that is not organized under the laws of the United States or a state thereof. Debtor is located (as determined pursuant to the Uniform Commercial Code) at (street address, state and county or parish): _____.

The Collateral is located at and shall be maintained at the following location(s):

STREET ADDRESS

CITY

STATE

ZIP CODE

COUNTY

Collateral shall be maintained only at the locations identified in this Section 5.15.

5.16 A carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement under the Uniform Commercial Code and may be filed by Bank in any filing office.

5.17 This Agreement shall be terminated only by the filing of a termination statement in accordance with the applicable provisions of the Uniform Commercial Code, but the obligations contained in Section 2.13 of this Agreement shall survive termination.

5.18 Debtor agrees to reimburse the Bank upon demand for any and all costs and expenses (including, without limit, court costs, legal expenses and reasonable attorneys fees, whether inside or outside counsel is used, whether or not suit is instituted and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in enforcing or attempting to enforce this Agreement or in exercising or attempting to exercise any right or remedy under this Agreement or incurred in any other matter or proceeding relating to this Security Agreement.

6. **DEBTOR AND BANK ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE INDEBTEDNESS.**

7. **Special Provisions Applicable to this Agreement. (*None, if left blank)**

Debtor:

OCEAN 4660, LLC

x By:


SIGNATURE OF HANNA KARCHO-POLSELLI

Its: Managing Member

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME OF CONTACT AT FILER [optional]		Account No.
B. SEND ACKNOWLEDGMENT TO: (Name and Address)		
Please Return To:		
CT CORPORATION SYSTEM		
Attn: Matt McEwen		
208 S. LaSalle Street, Ste. 814		
Chicago, IL 60604		

FLORIDA SECURED TRANSACTION REGISTRY

FILED

2008 Jan 04 AM 12:00

***** 20080735983X *****

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) do not abbreviate or combine names

1a. ORGANIZATION'S NAME OCEAN 4860, LLC				
OR	1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 40800 WOODWARD AVENUE		CITY BLOOMFIELD HILLS	STATE MI	POSTAL CODE 48304
1d. TAX ID# SSN OR EIN		1e. TYPE OF ORGANIZATION LLC	1f. JURISDICTION OF ORGANIZATION FLORIDA	
ADDL INFO RE ORGANIZATION DESIGN		1g. ORGANIZATIONAL ID#, if any <input type="checkbox"/> NONE L07000104436		

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. TAX ID# SSN OR EIN		2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	
ADDL INFO RE ORGANIZATION DESIGN		2g. ORGANIZATIONAL ID#, if any <input type="checkbox"/> NONE		

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME COMERICA BANK				
OR	3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 39200 SIX MILE ROAD		CITY LIVONIA	STATE MI	POSTAL CODE 48152-2689

4. This FINANCING STATEMENT covers the following collateral:

All of the following property now owned or later acquired by Debtor, wherever located: all personal property of Debtor, including, without limitation, all accounts (including without limit health care insurance receivables), chattel paper (including without limit tangible and electronic chattel paper), commercial tort claims, contract rights, deposit accounts, documents, equipment, fixtures, general intangibles (including without limit payment intangibles and software), instruments, inventory (including without limit returns and repossessions), letter of credit rights, supporting obligations, all investment property (including without limit securities, security entitlements and financial assets), and all additions, attachments, accessions, parts, replacements, substitutions, renewals, interest, dividends, distributions, rights of any kind and records (including without limit computer software) pertaining to the foregoing property, and all products and proceeds of any of the foregoing (whether cash or non-cash proceeds), including without limit insurance and condemnation proceeds. A reference to a type of collateral shall not be limited by a separate reference to a more specific or narrower type of that collateral. All terms herein have the meanings assigned to them in the Uniform Commercial Code, as those meanings may be amended, revised or replaced from time to time. "Uniform Commercial Code" means Act No. 174 of the Michigan Public Acts of 1962, as amended, revised or replaced from time to time, including without limit as amended by Act No. 348 of the Michigan Public Acts of 2000. The terms used herein which are defined in the Uniform Commercial Code shall have, at all times, the broadest and most inclusive meanings possible.

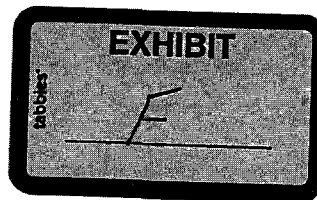
NO DOCUMENTARY STAMP TAX IS REQUIRED.

5. ALTERNATIVE DESIGNATION (if applicable)	LESSEE/LESSOR <input type="checkbox"/>	CONSIGNEE/CONSIGNOR <input type="checkbox"/>	BAILEE/BAIOL <input type="checkbox"/>	SELLER/BUYER <input type="checkbox"/>	AG. LIEN <input type="checkbox"/>	NON-UCC FILING <input type="checkbox"/>
6. This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. <input type="checkbox"/> Attach Addendum (if applicable)			7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) <input type="checkbox"/> [ADDITIONAL FEE] [optional]		All Debtors <input type="checkbox"/>	Debtor 1 <input type="checkbox"/>

8. OPTIONAL FILER REFERENCE DATA

HANNA KARCHO-POLSELLI (20864-2 LRS) FILE WITH FLORIDA SECRETARY OF STATE 7121681-50-2

FILING OFFICER COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/2006)



Detroit_815480_1

June 9, 2010

Ocean 4660, LLC
Attn: Hanna Karcho-Polselli, Managing Member
7557 West Sandlake Road
Orlando, Florida 32819

Re: **FINANCING ARRANGEMENTS AMONG COMERICA BANK ("BANK"),
OCEAN 4660, LLC ("BORROWER"), HANNA KARCHO-POLSELLI AND
REMO POLSELLI (IDENTIFIED COLLECTIVELY AS "GUARANTORS")**

Dear Ms. Karcho-Polselli:

Please refer to any and all documents, instruments and agreements executed in connection with the financing arrangements from Bank to Borrower and Guarantors (collectively, the "Loan Documents"). All amounts due from Borrower to Bank, whether now or in the future, contingent, fixed, primary and/or secondary, including, but not limited to, principal, interest, inside and outside counsel fees, audit fees, costs, expenses and any and all other charges provided for in the Loan Documents shall be known, in the aggregate, as the "Liabilities." All capitalized terms not defined in this letter agreement ("Agreement") shall have the meanings described in the Loan Documents.

As of June 9, 2010, the Liabilities include, but are not limited to, the following:

<u>Loans (note amount and date)</u>	<u>Principal</u>	<u>Interest</u>	<u>Late Fees</u>
Ocean 4660 Installment Loan (\$10,850,000; 1/3/08, as amended)	\$10,058,010.90	\$52,997.69	\$18,323.01
Ocean 4660 Draw-To Loan (\$1,000,000; 1/3/08, as amended)	\$933,449.13	\$2,573.28	\$272.58

These amounts are exclusive of interest accruing after June 9, 2010, letter of credit reimbursement obligations, swap obligations in the aggregate amount of \$112,053.70 and costs and expenses (including, but not limited to, reasonable inside and outside counsel fees). The above amounts also do not include Bank's separate loans to H.K. Hotel Management, LLC and Hanna Karcho-Polselli, which loans are not the subject of this Agreement.

Borrower is in default under the Loan Documents. Without limitation:

- (a) Borrower has failed to make principal and interest payments on the above-referenced Loans when due;
- (b) Borrower has failed to make payments to Bank under the swap agreement when due;



Detroit_1011878_2

(c) Borrower has failed to pay when due the 2008 and 2009 real property taxes with respect to the real property commonly known as 4660 N. Ocean Drive, Lauderdale by the Sea, Florida; and

(d) Borrower failed to maintain as of the fiscal year ending December 31, 2009 a Debt Service Coverage Ratio or not less than 1.3 to 1.0.

Other defaults may exist.

The above-described loans are term obligations. As a result of and for the reasons outlined above, Bank accelerates the loans and demands payment in full of all of the Liabilities. By copy of this letter demand is also made of the Guarantors of the Liabilities.

Subject to timely, written acceptance by Borrower and Guarantors of the following conditions, Bank is willing to forbear until July 30, 2010, subject to earlier termination as provided below, from further action to collect the Liabilities:

1. Borrower and Guarantors acknowledge the Liabilities as set out in the Loan Documents, the amount of the Liabilities as stated above and the existence of the defaults. Borrower and Guarantors acknowledge and agree that Bank's demand for repayment of the Liabilities is timely and proper.
2. Future administration of the Liabilities and the financing arrangements among Bank, Borrower and Guarantors shall continue to be governed by the covenants, terms and conditions of the Loan Documents, which are ratified and confirmed and incorporated by this reference (for clarity, this includes, without limitation, a ratification and confirmation of all guaranties of the Liabilities by Guarantors), except to the extent that the Loan Documents have been superseded, amended, modified or supplemented by this Agreement or are inconsistent with this Agreement, then this Agreement shall govern.
3. Borrower and Guarantors acknowledge Bank is under no obligation to advance funds or extend credit to Borrower under the Loan Documents, or otherwise.
4. Notwithstanding Bank's demand of the Liabilities, (a) Borrower shall pay all accrued interest on the Ocean 4660 Installment Loan and Ocean 4660 Draw-To Loan on the fifth (5th) day of each month, and (b) Borrower shall make all payments as and when due under the swap agreement.
5. Interest on the Liabilities shall continue to accrue at the non-default rates specified in the Loan Documents. Upon the occurrence of a default under the terms of this Agreement or any further defaults under the Loan Documents, then the principal outstanding on the Ocean 4660 Installment Loan and Ocean 4660 Draw-To Loan shall accrue interest at the rate otherwise provided in this paragraph plus three percent (3%).

6. By no later than June 21, 2010, Borrower shall pay in full the 2008 real property taxes with respect to the real property located at 4660 N. Ocean Drive, Lauderdale by the Sea, Florida, and shall pay in full the 2008 and 2009 real property taxes with respect to that portion of the parking lot that is subject to the ground lease.
7. Concurrently with execution of this Agreement, with respect to the property located at 4660 N. Ocean Drive, Lauderdale by the Sea, Florida, Borrower shall (a) execute an updated Notice to Borrower of Property in Special Flood Hazard Area in the form attached, and (b) provide to Bank (if not already in Bank's possession) either (i) a copy of the flood insurance application, together with proof of payment of the premium, or (ii) a copy of the declarations page of the flood insurance policy.
8. By no later than July 15, 2010, Borrower shall cause to be executed and delivered to Bank a Nondisturbance and Attornment Agreement (Prime Landlord) and a Landlord's Consent, each in form satisfactory to Bank, with respect to the portion of the parking lot that is subject to the ground lease.
9. Borrower shall use its best efforts to cause any and all Notices of Pendency or Lis Pendens (including those recorded by Oceanside Lauderdale, et al.) and any Claim of Lien filed by any third party (including the Claim of Lien filed by McNeill Signs, Inc.) with respect to the property located at 4660 N. Ocean Drive, Lauderdale by the Sea, Florida to be removed and discharged by June 30, 2010.
10. Borrower and Guarantors acknowledge and agree the Loan Documents presently provide for and they shall reimburse for any and all reasonable costs and expenses of Bank, including, but not limited to, all inside and outside counsel fees of Bank whether in relation to drafting, negotiating or enforcement or defense of the Loan Documents or this Agreement, including any preference or disgorgement actions as defined in this Agreement and all of Bank's audit fees, incurred by Bank in connection with the Liabilities, Bank's administration of the Liabilities and/or any efforts of Bank to collect or satisfy all or any part of the Liabilities. Borrower and Guarantors shall immediately reimburse Bank for all of Bank's costs and expenses upon Bank's incurrence thereof or upon demand.
11. Loan payments, interest on the Liabilities, loan administration expenses, including, but not limited to, all inside and outside counsel fees of Bank and Bank's appraisal fees and audit fees, may be charged directly to any of Borrower's accounts maintained with Bank.
12. Borrower will maintain all commercial accounts with Bank.
13. In addition to all reporting currently required by the Loan Documents, Borrower shall provide Bank:

- (a) By no later than June 21, 2010, updated personal financial statements (current as of no earlier than December 31, 2009) and current liquidity reports (current as of no earlier than March 31, 2010) for Hanna Karcho-Polselli and Remo Polselli;
 - (b) By no later than June 21, 2010, copies of the filed 2008 federal income tax returns (with all schedules) for Borrower and Guarantors;
 - (c) By no later than June 21, 2010, compiled financial statements for the year ending 2009 for Borrower, including profit and loss statements and balance sheets (excluding, or separately reporting, financial information related to the Little Inn hotel which is not encumbered by a mortgage in favor of Bank);
 - (d) Within 20 days after and as of the end of each month, company-prepared operating statements in form satisfactory to Bank for Borrower (excluding, or separately reporting, financial information related to the Little Inn hotel which is not encumbered by a mortgage in favor of Bank);
 - (e) By no later than June 21, 2010, a cash flow budget for Borrower for the calendar year 2010 (excluding, or separately reporting, financial information related to the Little Inn hotel which is not encumbered by a mortgage in favor of Bank);
 - (f) By no later than June 21, 2010, a schedule in form and substance satisfactory to Bank of all hotels owned (directly or indirectly) by Hanna Karcho-Polselli or Remo Polselli with full detail on debt structure, cash flow and such other information as Bank may request and
 - (g) any other reporting reasonably requested by Bank.
14. Borrower and Guarantors acknowledge and agree the Loan Documents presently provide and they shall permit Bank to conduct such fair market value appraisals, inspections, surveys and/or testing, whether for environmental contamination or otherwise, that Bank deems necessary, on any and all real and personal property upon which Bank may possess a mortgage or security interest securing the Liabilities, and the cost of such appraisals, inspections, surveys and testing are part of the costs and expenses for which the Borrower and Guarantors must reimburse Bank.
15. Borrower and Guarantors agree to execute any and all additional or supplemental documentation, and provide such further assistance and assurances as Bank may require, in Bank's sole and absolute discretion, to give full effect of the terms, conditions and intentions of this Agreement.
16. Notwithstanding anything to the contrary herein, Bank reserves the right, in its sole discretion, to determine the application of the proceeds of all unusual or extraordinary items (including, by way of example, insurance proceeds or sale proceeds, other than

collection of accounts for inventory sold in the ordinary course of business) to the various obligations of Borrower to Bank.

17. To the extent any payment received by Bank is deemed a preference, fraudulent transfer or otherwise subject to disgorgement under applicable law, including bankruptcy or insolvency law, which requires the Bank to disgorge such payment then, such payment will be deemed to have never occurred and the Liabilities will be adjusted accordingly.
18. This Agreement shall be governed and controlled in all respects by the laws of the State of Michigan, without reference to its conflict of law provisions, including interpretation, enforceability, validity and construction.
19. Bank expressly reserves the right to exercise any or all rights and remedies provided under the Loan Documents and applicable law except as modified herein. Bank's failure to exercise immediately such rights and remedies shall not be construed as a waiver or modification of those rights or an offer of forbearance.
20. This Agreement will inure to the benefit of Bank and all its past, present and future parents, subsidiaries, affiliates, predecessors and successor corporations and all of their subsidiaries and affiliates.
21. Bank anticipates that discussions addressing the Liabilities may take place in the future. During the course of such discussions, Bank, Borrower and Guarantors may touch upon and possibly reach a preliminary understanding on one or more issues prior to concluding negotiations. Notwithstanding this fact and absent an express written waiver, neither Bank, Borrower nor any Guarantor will be bound by an agreement on any individual issues unless and until an agreement is reduced to writing and signed by the applicable parties.
22. As of the date of this Agreement, there are no other offers outstanding from Bank to Borrower and Guarantors. Any prior offer by Bank, whether oral or written is hereby rescinded in full. There are no oral agreements between Bank and Borrower and Guarantors; any agreements concerning the Liabilities are expressed only in the existing Loan Documents. The duties and obligations of Borrower and Guarantors and Bank shall be only as set forth in the Loan Documents and this Agreement, when executed by all parties.
23. Borrower and Guarantors acknowledge that they have reviewed (or have had the opportunity to review) this Agreement with counsel of their choice and have executed this Agreement of their own free will and accord and without duress or coercion of any kind by Bank or any other person or entity.
24. **BORROWER, GUARANTORS AND BANK ACKNOWLEDGE AND AGREE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT**

THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT, THE LOAN DOCUMENTS OR THE LIABILITIES.

25. DEFAULTS HAVE OCCURRED UNDER THE LOAN DOCUMENTS. BORROWER AND GUARANTORS, TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, WAIVE ALL NOTICES THAT BANK MIGHT BE REQUIRED TO GIVE BUT FOR THIS WAIVER, INCLUDING ANY NOTICES OTHERWISE REQUIRED UNDER SECTION 6 OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE AS ENACTED IN THE STATE OF MICHIGAN OR THE RELEVANT STATE CONCERNING THE APPLICABLE COLLATERAL (AND UNDER ANY SIMILAR RIGHTS TO NOTICE GRANTED IN ANY ENACTMENT OF REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE). FURTHERMORE, BORROWER AND GUARANTORS WAIVE (A) THE RIGHT TO NOTIFICATION OF DISPOSITION OF THE COLLATERAL UNDER § 9-611 OF THE UNIFORM COMMERCIAL CODE, (B) THE RIGHT TO REQUIRE DISPOSITION OF THE COLLATERAL UNDER § 9-620(E) OF THE UNIFORM COMMERCIAL CODE, AND (C) ALL RIGHTS TO REDEEM ANY OF THE COLLATERAL UNDER § 9-623 OF THE UNIFORM COMMERCIAL CODE.
26. BORROWER AND GUARANTORS, IN EVERY CAPACITY, INCLUDING, BUT NOT LIMITED TO, AS SHAREHOLDERS, PARTNERS, OFFICERS, DIRECTORS, INVESTORS AND/OR CREDITORS OF BORROWER AND/OR GUARANTORS, OR ANY ONE OR MORE OF THEM, HEREBY WAIVE, DISCHARGE AND FOREVER RELEASE BANK, BANK'S EMPLOYEES, OFFICERS, DIRECTORS, ATTORNEYS, STOCKHOLDERS, AFFILIATES AND SUCCESSORS AND ASSIGNS, FROM AND OF ANY AND ALL CLAIMS, CAUSES OF ACTION, DEFENSES, COUNTERCLAIMS OR OFFSETS AND/OR ALLEGATIONS BORROWER AND/OR GUARANTORS MAY HAVE OR MAY HAVE MADE OR WHICH ARE BASED ON FACTS OR CIRCUMSTANCES ARISING AT ANY TIME UP THROUGH AND INCLUDING THE DATE OF THIS AGREEMENT, WHETHER KNOWN OR UNKNOWN, AGAINST ANY OR ALL OF BANK, BANK'S EMPLOYEES, OFFICERS, DIRECTORS, ATTORNEYS, STOCKHOLDERS, AFFILIATES AND SUCCESSORS AND ASSIGNS.

Ocean 4660, LLC
June 9, 2010
Page 7

27. This Agreement may be executed in counterparts and delivered by facsimile and the counterparts and/or facsimiles, when properly executed and delivered by the signing deadline, will constitute a fully executed complete agreement.
28. Borrower and Guarantors shall properly execute this Agreement and deliver same by facsimile so that it is received by the undersigned by no later than 5:00 p.m. on June 18, 2010 with the original to follow so that it is received by the undersigned by no later than June 22, 2010.

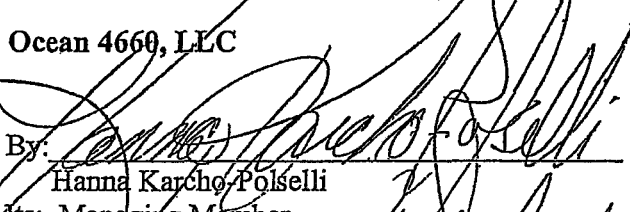
Bank reserves the right to terminate its forbearance prior to July 30, 2010, in the event of any new defaults under the Loan Documents, defaults under this Agreement, in the event of further deterioration in the financial condition of Borrower or Guarantors or further deterioration in Bank's collateral position, and/or in the event Bank, for any reason, in good faith believes that the prospect of payment or performance is impaired.

Very truly yours,

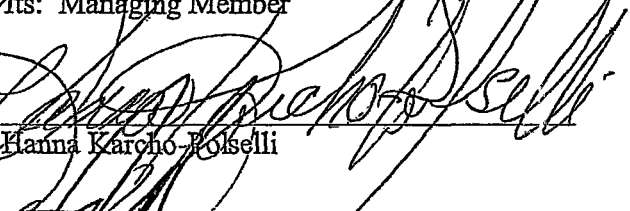
Alan S. Blankstein
Vice President
Special Assets Group
100 N.E. Third Avenue, Suite 600
Fort Lauderdale, Florida 33301
(954) 468-0667
Fax: (954) 468-0664

ACKNOWLEDGED AND AGREED:

Ocean 4660, LLC

By: 
Hanna Karcho-Polselli
Its: Managing Member

Date: June 9, 2010


Hanna Karcho-Polselli

Date: June 9, 2010


Remo Polselli

Date: June 19, 2010

September 3, 2010

Ocean 4660, LLC
Attn: Hanna Karcho-Polselli, Managing Member
7557 West Sandlake Road
Orlando, Florida 32819

Re: **AGREEMENT DATED JUNE 9, 2010 (THE "FORBEARANCE AGREEMENT")
AMONG COMERICA BANK ("BANK"), OCEAN 4660, LLC ("BORROWER"),
HANNA KARCHO-POLSELLI AND REMO POLSELLI (IDENTIFIED
COLLECTIVELY AS "GUARANTORS")**

Dear Ms. Karcho-Polselli:

All capitalized terms not defined in this amendment to the Forbearance Agreement (the "Amendment") shall have the meanings set forth in the Forbearance Agreement (which constitutes a Loan Document) or the other Loan Documents.

As of September 3, 2010, the Liabilities include, but are not limited to, the following:

<u>Loans (note amount and date)</u>	<u>Principal</u>	<u>Interest</u>	<u>Late Fees</u>
Ocean 4660 Installment Loan (\$10,850,000; 1/3/08, as amended)	\$10,058,010.90	\$51,042.63	\$998.31
Ocean 4660 Draw-To Loan (\$1,000,000; 1/3/08, as amended)	\$933,449.13	\$4,882.82	\$105.01

These amounts are exclusive of interest accruing after September 3, 2010, letter of credit reimbursement obligations, swap obligations in the aggregate amount of \$75,767.64 and costs and expenses (including, but not limited to, reasonable inside and outside counsel fees). The above amounts also do not include Bank's separate loans to H.K. Hotel Management, LLC and Hanna Karcho-Polselli, which loans are not the subject of this Amendment.

Bank's forbearance under the Forbearance Agreement expired on July 30, 2010. Bank's continued forbearance since that date has been from day to day in Bank's sole discretion. Borrower and Guarantors have requested that Bank continue to forbear.

Subject to timely, written acceptance by Borrower and Guarantors of the following conditions, Bank is willing to continue to forbear until October 15, 2010, subject to earlier termination as provided below, from further action to collect the Liabilities:

1. Borrower and Guarantors acknowledge the Liabilities as set out in the Loan Documents, the amount of the Liabilities as stated above and the existence of the defaults. Borrower

and Guarantors acknowledge and agree that Bank's demand for repayment of the Liabilities was timely and proper.

2. Future administration of the Liabilities and the financing arrangements among Bank, Borrower and Guarantors shall continue to be governed by the covenants, terms and conditions of the Loan Documents, which are ratified and confirmed and incorporated by this reference (for clarity, this includes, without limitation, a ratification and confirmation of all guaranties of the Liabilities by Guarantors), except to the extent that the Loan Documents have been superseded, amended, modified or supplemented by this Amendment or are inconsistent with this Amendment, then this Amendment shall govern.
3. Borrower and Guarantors acknowledge Bank is under no obligation to advance funds or extend credit to Borrower under the Loan Documents, or otherwise.
4. Notwithstanding Bank's demand of the Liabilities, (a) Borrower shall pay all accrued interest on the Ocean 4660 Installment Loan and Ocean 4660 Draw-To Loan on the fifth (5th) day of each month, and (b) Borrower shall make all payments as and when due under the swap agreement. Concurrently with execution of this Amendment, Borrower shall pay all past due payments under the swap agreement in the aggregate amount of \$75,767.64. All principal payments shall be deferred until expiration or earlier termination of Bank's forbearance.
5. Interest on the Liabilities shall continue to accrue at the non-default rates specified in the Loan Documents. Upon the occurrence of a default under the terms of this Amendment or any further defaults under the Loan Documents, or upon the expiration or earlier termination of Bank's forbearance under this Amendment, then the principal outstanding on the Ocean 4660 Installment Loan and Ocean 4660 Draw-To Loan shall accrue interest at the rate otherwise provided in this paragraph plus three percent (3%).
6. By no later than September 15, 2010, Borrower shall pay in full the 2008 and 2009 real property taxes with respect to that portion of the parking lot that is subject to the ground lease.
7. Concurrently with execution of this Amendment, with respect to the property located at 4660 N. Ocean Drive, Lauderdale by the Sea, Florida, Borrower shall (a) execute an updated Notice to Borrower of Property in Special Flood Hazard Area in the form attached, and (b) provide to Bank (if not already in Bank's possession) either (i) a copy of the flood insurance application, together with proof of payment of the premium, or (ii) a copy of the declarations page of the flood insurance policy.
8. By no later than September 30, 2010, Borrower shall cause to be executed and delivered to Bank a Nondisturbance and Attornment Agreement (Prime Landlord) and a Landlord's Consent, each in form satisfactory to Bank, with respect to the portion of the parking lot that is subject to the ground lease.

9. Borrower shall use its best efforts to cause any and all Notices of Pendency or Lis Pendens (including those recorded by Oceanside Lauderdale, et al.) and any Claim of Lien filed by any third party with respect to the property located at 4660 N. Ocean Drive, Lauderdale by the Sea, Florida to be removed and discharged by September 30, 2010.
10. Borrower and Guarantors acknowledge and agree the Loan Documents presently provide for and they shall reimburse for any and all reasonable costs and expenses of Bank, including, but not limited to, all inside and outside counsel fees of Bank whether in relation to drafting, negotiating or enforcement or defense of the Loan Documents or this Amendment, including any preference or disgorgement actions as defined in this Amendment and all of Bank's audit fees, incurred by Bank in connection with the Liabilities, Bank's administration of the Liabilities and/or any efforts of Bank to collect or satisfy all or any part of the Liabilities. Borrower and Guarantors shall immediately reimburse Bank for all of Bank's costs and expenses upon Bank's incurrence thereof or upon demand.
11. Loan payments, interest on the Liabilities, loan administration expenses, including, but not limited to, all inside and outside counsel fees of Bank and Bank's appraisal fees and audit fees, may be charged directly to any of Borrower's accounts maintained with Bank.
12. Borrower will maintain all commercial accounts with Bank.
13. In addition to all reporting currently required by the Loan Documents, Borrower shall provide Bank:
 - (a) By no later than September 30, 2010, updated personal financial statements (current as of no earlier than June 30, 2010) and current liquidity reports (current as of no earlier than June 30, 2010) for Hanna Karcho-Polselli and Remo Polselli;
 - (b) By no later than September 30, 2010, copies of the filed 2008 federal income tax returns (with all schedules) for Borrower and Guarantors;
 - (c) By no later than September 30, 2010, compiled financial statements for the year ending 2009 for Borrower, including profit and loss statements and balance sheets (excluding, or separately reporting, financial information related to the Little Inn hotel which is not encumbered by a mortgage in favor of Bank);
 - (d) Within 20 days after and as of the end of each month, company-prepared operating statements in form satisfactory to Bank for Borrower (excluding, or separately reporting, financial information related to the Little Inn hotel which is not encumbered by a mortgage in favor of Bank);
 - (e) By no later than September 30, 2010, a cash flow budget for Borrower for the calendar year 2010 (excluding, or separately reporting, financial information

related to the Little Inn hotel which is not encumbered by a mortgage in favor of Bank);

- (f) By no later than September 30, 2010, a schedule in form and substance satisfactory to Bank of all hotels owned (directly or indirectly) by Hanna Karcho-Polselli or Remo Polselli with full detail on debt structure, cash flow and such other information as Bank may request and
 - (g) any other reporting reasonably requested by Bank.
- 14. Borrower and Guarantors acknowledge and agree the Loan Documents presently provide and they shall permit Bank to conduct such fair market value appraisals, inspections, surveys and/or testing, whether for environmental contamination or otherwise, that Bank deems necessary, on any and all real and personal property upon which Bank may possess a mortgage or security interest securing the Liabilities, and the cost of such appraisals, inspections, surveys and testing are part of the costs and expenses for which the Borrower and Guarantors must reimburse Bank.
 - 15. Borrower and Guarantors agree to execute any and all additional or supplemental documentation, and provide such further assistance and assurances as Bank may require, in Bank's sole and absolute discretion, to give full effect of the terms, conditions and intentions of this Amendment.
 - 16. Notwithstanding anything to the contrary herein, Bank reserves the right, in its sole discretion, to determine the application of the proceeds of all unusual or extraordinary items (including, by way of example, insurance proceeds or sale proceeds, other than collection of accounts for inventory sold in the ordinary course of business) to the various obligations of Borrower to Bank.
 - 17. To the extent any payment received by Bank is deemed a preference, fraudulent transfer or otherwise subject to disgorgement under applicable law, including bankruptcy or insolvency law, which requires the Bank to disgorge such payment then, such payment will be deemed to have never occurred and the Liabilities will be adjusted accordingly.
 - 18. This Amendment shall be governed and controlled in all respects by the laws of the State of Michigan, without reference to its conflict of law provisions, including interpretation, enforceability, validity and construction.
 - 19. Bank expressly reserves the right to exercise any or all rights and remedies provided under the Loan Documents and applicable law except as modified herein. Bank's failure to exercise immediately such rights and remedies shall not be construed as a waiver or modification of those rights or an offer of forbearance.

20. This Amendment will inure to the benefit of Bank and all its past, present and future parents, subsidiaries, affiliates, predecessors and successor corporations and all of their subsidiaries and affiliates.
21. Bank anticipates that discussions addressing the Liabilities may take place in the future. During the course of such discussions, Bank, Borrower and Guarantors may touch upon and possibly reach a preliminary understanding on one or more issues prior to concluding negotiations. Notwithstanding this fact and absent an express written waiver, neither Bank, Borrower nor any Guarantor will be bound by an agreement on any individual issues unless and until an agreement is reduced to writing and signed by the applicable parties.
22. As of the date of this Amendment, there are no other offers outstanding from Bank to Borrower and Guarantors. Any prior offer by Bank, whether oral or written is hereby rescinded in full. There are no oral agreements between Bank and Borrower and Guarantors; any agreements concerning the Liabilities are expressed only in the existing Loan Documents. The duties and obligations of Borrower and Guarantors and Bank shall be only as set forth in the Loan Documents and this Amendment, when executed by all parties.
23. Borrower and Guarantors acknowledge that they have reviewed (or have had the opportunity to review) this Amendment with counsel of their choice and have executed this Amendment of their own free will and accord and without duress or coercion of any kind by Bank or any other person or entity.
24. **BORROWER, GUARANTORS AND BANK ACKNOWLEDGE AND AGREE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AMENDMENT, THE LOAN DOCUMENTS OR THE LIABILITIES.**
25. **DEFAULTS HAVE OCCURRED UNDER THE LOAN DOCUMENTS. BORROWER AND GUARANTORS, TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, WAIVE ALL NOTICES THAT BANK MIGHT BE REQUIRED TO GIVE BUT FOR THIS WAIVER, INCLUDING ANY NOTICES OTHERWISE REQUIRED UNDER SECTION 6 OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE AS ENACTED IN THE STATE OF MICHIGAN OR THE RELEVANT STATE CONCERNING THE APPLICABLE COLLATERAL (AND UNDER ANY SIMILAR RIGHTS TO NOTICE GRANTED IN ANY ENACTMENT OF REVISED ARTICLE 9 OF THE UNIFORM**

COMMERCIAL CODE). FURTHERMORE, BORROWER AND GUARANTORS WAIVE (A) THE RIGHT TO NOTIFICATION OF DISPOSITION OF THE COLLATERAL UNDER § 9-611 OF THE UNIFORM COMMERCIAL CODE, (B) THE RIGHT TO REQUIRE DISPOSITION OF THE COLLATERAL UNDER § 9-620(E) OF THE UNIFORM COMMERCIAL CODE, AND (C) ALL RIGHTS TO REDEEM ANY OF THE COLLATERAL UNDER § 9-623 OF THE UNIFORM COMMERCIAL CODE.

26. BORROWER AND GUARANTORS, IN EVERY CAPACITY, INCLUDING, BUT NOT LIMITED TO, AS SHAREHOLDERS, PARTNERS, OFFICERS, DIRECTORS, INVESTORS AND/OR CREDITORS OF BORROWER AND/OR GUARANTORS, OR ANY ONE OR MORE OF THEM, HEREBY WAIVE, DISCHARGE AND FOREVER RELEASE BANK, BANK'S EMPLOYEES, OFFICERS, DIRECTORS, ATTORNEYS, STOCKHOLDERS, AFFILIATES AND SUCCESSORS AND ASSIGNS, FROM AND OF ANY AND ALL CLAIMS, CAUSES OF ACTION, DEFENSES, COUNTERCLAIMS OR OFFSETS AND/OR ALLEGATIONS BORROWER AND/OR GUARANTORS MAY HAVE OR MAY HAVE MADE OR WHICH ARE BASED ON FACTS OR CIRCUMSTANCES ARISING AT ANY TIME UP THROUGH AND INCLUDING THE DATE OF THIS AMENDMENT, WHETHER KNOWN OR UNKNOWN, AGAINST ANY OR ALL OF BANK, BANK'S EMPLOYEES, OFFICERS, DIRECTORS, ATTORNEYS, STOCKHOLDERS, AFFILIATES AND SUCCESSORS AND ASSIGNS.
27. This Amendment may be executed in counterparts and delivered by facsimile and the counterparts and/or facsimiles, when properly executed and delivered by the signing deadline, will constitute a fully executed complete agreement.
28. Borrower and Guarantors shall properly execute this Amendment and deliver same by facsimile so that it is received by the undersigned by no later than 5:00 p.m. on September 9, 2010 with the original to follow so that it is received by the undersigned by no later than September 10, 2010.

Ocean 4660, LLC
September 3, 2010
Page 7

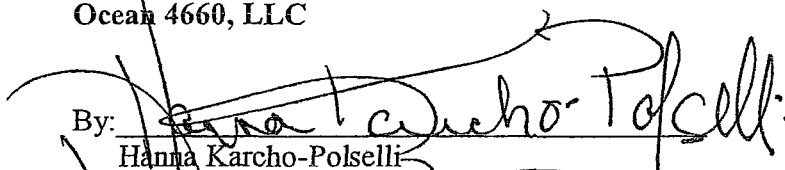
Bank reserves the right to terminate its forbearance prior to October 15, 2010, in the event of any new defaults under the Loan Documents, defaults under this Amendment, in the event of further deterioration in the financial condition of Borrower or Guarantors or further deterioration in Bank's collateral position, and/or in the event Bank, for any reason, in good faith believes that the prospect of payment or performance is impaired.

Very truly yours,

Alan S. Blankstein
Vice President
Special Assets Group
100 N.E. Third Avenue, Suite 600
Fort Lauderdale, Florida 33301
(954) 468-0667
Fax: (954) 468-0664

ACKNOWLEDGED AND AGREED:

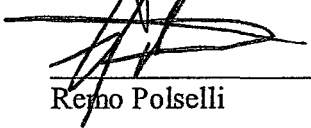
Ocean 4660, LLC

By: 
Hanna Karcho-Polselli
Its: Managing Member

Date: September 9, 2010


Hanna Karcho-Polselli

Date: September 9, 2010


Remo Polselli

Date: September 9, 2010

May 5, 2011

Ocean 4660, LLC
Attn: Hanna Karcho-Polselli, Managing Member
7557 West Sandlake Road
Orlando, Florida 32819

Re: **AGREEMENT DATED JUNE 9, 2010 (AS AMENDED ON SEPTEMBER 3, 2010, THE "FORBEARANCE AGREEMENT") AMONG COMERICA BANK ("BANK"), OCEAN 4660, LLC ("BORROWER"), HANNA KARCHO-POLSELLI AND REMO POLSELLI (IDENTIFIED COLLECTIVELY AS "GUARANTORS")**

Dear Ms. Karcho-Polselli:

All capitalized terms not defined in this second amendment to the Forbearance Agreement (the "Second Amendment") shall have the meanings set forth in the Forbearance Agreement (which constitutes a Loan Document) or the other Loan Documents.

As of April 29, 2011, the Liabilities include, but are not limited to, the following:

<u>Loans (note amount and date)</u>	<u>Principal</u>	<u>Interest</u>	<u>Late Fees</u>
Ocean 4660 Installment Loan (\$10,850,000; 1/3/08, as amended)	\$10,118,195.70	\$187,287.99	\$998.31
Ocean 4660 Draw-To Loan (\$1,000,000; 1/3/08, as amended)	\$933,449.13	\$16,335.36	\$0

These amounts are exclusive of interest accruing after April 29, 2011, letter of credit reimbursement obligations, swap obligations in the aggregate amount of \$101,844.60, amounts owed to reimburse Bank for the protective advance made by Bank in the amount of \$612,731.93 for 2009 and 2010 real property taxes, amounts expended by Bank for forced placed insurance in the amount of \$28,632.80 through March 31, 2011, and costs and expenses (including, but not limited to, reasonable inside and outside counsel fees). The above amounts also do not include Bank's separate loans to H.K. Hotel Management, LLC and Hanna Karcho-Polselli, which loans are not the subject of this Second Amendment.

Borrower is in default under the Forbearance Agreement and other Loan Documents. Without limitation, Borrower failed to pay by September 15, 2010 the 2008 and 2009 real property taxes with respect to that portion of the parking lot that is subject to the ground lease. Borrower also failed to deliver by September 30, 2010 an executed Nondisturbance and Attornment Agreement (Prime Landlord) and a Landlord's consent as required under the Forbearance Agreement. Other defaults may exist as well.

Bank's forbearance under the Forbearance Agreement expired on October 15, 2010. Bank's continued forbearance since that date has been from day to day in Bank's sole discretion. Borrower and Guarantors have requested that Bank continue to forbear.

Subject to timely, written acceptance by Borrower and Guarantors of the following conditions, Bank is willing to continue to forbear until October 31, 2011 (the "Expiration Date"), subject to earlier termination as provided below, from further action to collect the Liabilities:

1. Borrower and Guarantors acknowledge the Liabilities as set out in the Loan Documents, the amount of the Liabilities as stated above and the existence of the defaults. Borrower and Guarantors acknowledge and agree that Bank's demand for repayment of the Liabilities was timely and proper.
2. Future administration of the Liabilities and the financing arrangements among Bank, Borrower and Guarantors shall continue to be governed by the covenants, terms and conditions of the Loan Documents, which are ratified and confirmed and incorporated by this reference (for clarity, this includes, without limitation, a ratification and confirmation of all guaranties of the Liabilities by Guarantors), except to the extent that the Loan Documents have been superseded, amended, modified or supplemented by this Second Amendment or are inconsistent with this Second Amendment, then this Second Amendment shall govern.
3. Borrower and Guarantors acknowledge Bank is under no obligation to advance funds or extend credit to Borrower under the Loan Documents, or otherwise.
4. Concurrently with execution of this Second Amendment, Borrower shall pay to Bank the sum of \$233,254.46, which shall be applied to pay the accrued interest and late fees on the loans through April 29, 2011 and to reimburse Bank for the forced placed insurance through March 31, 2011.
5. By no later than May 16, 2011, Borrower shall pay to Bank the sum of \$79,079.76, which shall be applied to reimburse Bank for a portion of the protective advance for the 2009 and 2010 real property taxes.
6. By no later than July 31, 2011, Borrower shall pay to Bank the sum of \$78,229.44, which shall be applied to reimburse Bank for a portion of the protective advance for the 2009 and 2010 real property taxes.
7. Except as otherwise set forth in paragraphs 4-6 above or in paragraphs 23 and 24 below, all principal, interest and swap payments shall otherwise be deferred until expiration or earlier termination of Bank's forbearance.
8. Within 10 days after the end of each month, Borrower shall provide to Bank a financial statement as of the end of such month in form satisfactory to Bank.

9. Interest on the Liabilities shall continue to accrue at the non-default rates specified in the Loan Documents. Upon the occurrence of a default under the terms of this Second Amendment or any further defaults under the Loan Documents, or upon the expiration or earlier termination of Bank's forbearance under this Amendment, then the principal outstanding on the Ocean 4660 Installment Loan and Ocean 4660 Draw-To Loan shall accrue interest at the rate otherwise provided in this paragraph plus three percent (3%).
10. Commencing August 1, 2011, Borrower shall maintain current and not permit to become more than ten days delinquent all utility bills, taxes (including sales taxes, payroll taxes and any other taxes, except for real and personal property taxes) and other operating expenses with respect to the property located at 4660 N. Ocean Drive, Lauderdale by the Sea, Florida (the "Hotel"); if Borrower's cash receipts are insufficient to pay such items, Guarantors shall fund any shortfall. In the event of a default, Bank may terminate forbearance and exercise its remedies.
11. Borrower shall not pay any management fee or other compensation to Guarantors or to any company affiliated with, owned or controlled, directly or indirectly, by Borrower or any Guarantor.
12. Borrower shall permit Bank or its consultant to verify the status of all taxes (including but not limited to sales taxes and payroll taxes) and shall authorize the relevant taxing authorities to communicate directly with Bank.
13. By no later than May 31, 2011, Borrower shall cause to be discharged (a) the Broward County Tourist Development Tax Warrant Lien in the original amount of \$8,777.16 recorded 4/14/09, (b) the claim of lien recorded by the Town of Lauderdale by the Sea on 11/15/10 for \$2,740 for Fire Response Services; (c) the Default Final Judgment recorded on 12/29/10 by Waste Management, Inc. of Florida d/b/a Southern Sanitation Service in the amount of \$4,184.25. By no later than July 31, 2011, Borrower shall cause to be discharged all liens, notices of pendency, lis pendens or any other documents recorded in the real property records against the Hotel (or with respect to any liquor licenses owned by Borrower) by Oceanside Lauderdale, Inc., Kenneth A. Frank, Angela DiPilato or any other party related to any of the foregoing. In addition, Borrowers shall not permit any new liens or encumbrances to be recorded against the Hotel on or after March 3, 2011. If there is a default, Bank may immediately commence foreclosure of its mortgage on the Hotel and neither Borrower nor any Guarantor will contest the foreclosure proceedings. In the event of foreclosure, Bank will request that the court set the foreclosure sale date no sooner than December 1, 2011.
14. Concurrently with execution of this Second Amendment, Borrower and/or Guarantors (as applicable) shall execute documents in form satisfactory to Bank to collaterally assign to Bank all liquor licenses used in operation of the Hotel.

15. Concurrently with execution of this Second Amendment, Borrower shall execute an affidavit in form acceptable to Bank sufficient to induce First American Title Insurance Company to delete the following items related to Howard Johnson as exceptions on Bank's title commitment: (i) Lease dated 6/11/73 between James Walker and Howard Johnson Company; (ii) Declaration of License Agreement dated 6/11/73 between Howard Johnson Company and James Walker; (iii) Declaration of License Agreement dated 7/1/74 between Howard Johnson Company and Willard G. Franks; (iv) Declaration of License Agreement dated 7/1/94 for Howard Johnson Restaurant; and (v) Howard Johnson Franchise Systems, Inc. Declaration of License Agreement dated 1/1/95.
16. Upon expiration or earlier termination of Bank's forbearance, then upon request by Bank (a "Deed in Lieu Request"), Borrower shall execute and deliver to Bank a deed in lieu of foreclosure (to Bank or its designee) with respect to the Hotel, together with an agreement providing for the voluntary surrender of all personal property located at the Hotel (excluding any personal property which is leased by Borrower), an agreement providing for the acceptance by Bank of all personal property located at the Hotel in partial satisfaction of the Liabilities, and such other related documentation as Bank may require. Such documents shall be in the form attached to this Second Amendment. Notwithstanding the foregoing, in the event of any default under this Second Amendment or the other Loan Documents, Bank may only make a Deed in Lieu Request if Bank has first provided to Borrower written notice of such default (which written notice shall be sent (i) via email to resortamerica@gmail.com and (ii) via either Federal Express or certified mail to Borrower at 55 E. Long Lake, Suite 204, Troy, Michigan 48085) and Borrower has failed to cure the default within 5 business days after the date that the notice is sent. For clarity, Bank may exercise any other remedies (other than making a Deed in Lieu Request) immediately following any default without any requirement for notice to Borrower or Guarantors or opportunity to cure. Concurrently with execution of this Second Amendment, Borrower shall provide Bank with copies of all leases of personal property with respect to the Hotel. Such leases are described on **Exhibit A**.
17. Upon expiration or earlier termination of Bank's forbearance, upon request by Bank, Borrower and Guarantors shall consent to the appointment of a receiver selected by Bank to operate the Hotel.
18. Provided that Borrower executes and delivers the deed and related documents referenced in paragraph 16 above (if and when so requested by Bank) and the consent to appointment of a receiver referenced in paragraph 17 above (if and when so requested by Bank) and further provided that neither Borrower nor any Guarantor (a) becomes the subject of a petition for relief under the Bankruptcy Code, an assignment for the benefit of creditors or a similar insolvency proceeding, (b) objects to, contests or appeals any action by Bank seeking appointment of a receiver over any of Bank's collateral or foreclosure of Bank's mortgage on the Hotel, or (c) files any action seeking to restrain or enjoin Bank from recording the deed or otherwise exercising its rights against the

collateral, then (x) if Bank elects to record the deed, upon recording of the deed and either completion of foreclosure with respect to the personal property or consummation of an acceptance of the personal property by Bank in partial satisfaction of the Liabilities, Bank will deliver to Borrower and Guarantors a covenant not to sue them for a money judgment with respect to the loans outstanding to Borrower in the form attached and (y) if Bank elects to commence foreclosure of its mortgage, upon the issuance of a certificate of title by the clerk of the court after completion of the foreclosure sale and expiration of the time period to appeal the sale, Bank agrees that it will not pursue a money judgment against Borrower or Guarantors with respect to the loans outstanding to Borrower.

19. By no later than May 31, 2011, Borrower shall cause to be executed and delivered to Bank a Nondisturbance and Attornment Agreement (Prime Landlord) and a Landlord's Consent, each in form satisfactory to Bank, with respect to the portion of the parking lot that is subject to the ground lease.
20. Concurrently with execution of this Second Amendment, all members of Borrower shall execute documents in the form attached pledging to Bank 100% of the equity interests in Borrower.
21. Concurrently with execution of this Second Amendment, and throughout the term of Bank's forbearance, Borrower shall list the Hotel for sale with a real estate broker acceptable to Bank and at a list price acceptable to Bank.
22. Concurrently with execution of this Second Amendment, Borrower shall execute documents in the form attached to cross-collateralize Bank's loans to Borrower with Bank's loans to Hanna Karcho-Polselli and H.K. Hotel Management, LLC. In the event of a sale of the Hotel by Borrower, Bank agrees that the release price for its mortgage on the Hotel shall be the greater of (a) the proceeds from the sale of the Hotel, net of real property taxes, broker's commission of not more than 6% and such other closing costs as may be approved by Bank in writing (but not to exceed the total of the amount outstanding with respect to the direct loans to and swap obligations of Borrower plus the amount outstanding with respect to the direct loans to Hanna Karcho-Polselli and H.K. Hotel Management, LLC) and (b) the amount outstanding with respect to the direct loans to and swap obligations of Borrower.
23. Provided the following conditions (the "Extension Conditions") are met, then the Expiration Date shall be automatically extended until November 30, 2012:
 - (a) there are no defaults under this Second Amendment, and no further defaults under the other Loan Documents;
 - (b) by October 30, 2011, Borrower shall reimburse Bank for any protective advances made by Bank for taxes or insurance;

- (c) by October 30, 2011, Borrower shall bring current all swap payments and accrued interest;
- (d) by October 30, 2011, Borrower shall have paid in full the 2011 real and personal property taxes;
- (e) by October 30, 2011, Borrower shall have procured insurance on the Hotel in form required under the Loan Documents, with premiums paid in full in advance through November 30, 2012; and
- (f) by October 30, 2011, Borrower shall have reduced the principal amount outstanding on the Ocean 4660 Installment Loan and the Ocean 4660 Draw-To Loan by an aggregate amount of at least \$1,000,000 from the amounts outstanding as of the date of this Second Amendment.

The Expiration Date shall automatically be extended until November 30, 2012 upon satisfaction of the Extension Conditions.

- 24. If the Extension Conditions set forth in paragraph 23 above are met and the Expiration Date is extended until November 30, 2012, then commencing on the first day of the month following the calendar month in which the Extension Conditions are satisfied, (a) Borrower shall pay into escrow with Bank on the first day of each month 1/12th of the estimated amount of the real property taxes for 2012 (as determined by Bank) and (b) Borrower shall pay to Bank on the first day of each month all accrued interest on the loans, plus a principal installment based upon a 20 year amortization schedule.
- 25. Borrower shall not enter into any new leases or subleases (and shall not modify or amend any existing leases or subleases) with respect to any portion of the Hotel without the express written consent of Bank.
- 26. Concurrently with execution of this Second Amendment, with respect to the Hotel, Borrower shall (a) execute an updated Notice to Borrower of Property in Special Flood Hazard Area in the form attached, and (b) provide to Bank (if not already in Bank's possession) either (i) a copy of the flood insurance application, together with proof of payment of the premium, or (ii) a copy of the declarations page of the flood insurance policy.
- 27. Borrower and Guarantors acknowledge and agree the Loan Documents presently provide for and they shall reimburse for any and all reasonable costs and expenses of Bank, including, but not limited to, all inside and outside counsel fees of Bank whether in relation to drafting, negotiating or enforcement or defense of the Loan Documents or this Second Amendment, including any preference or disgorgement actions as defined in this Second Amendment and all of Bank's audit fees, incurred by Bank in connection with the Liabilities, Bank's administration of the Liabilities and/or any efforts of Bank to collect

or satisfy all or any part of the Liabilities. Borrower and Guarantors shall immediately reimburse Bank for all of Bank's costs and expenses upon Bank's incurrence thereof or upon demand.

28. Loan payments, interest on the Liabilities, loan administration expenses, including, but not limited to, all inside and outside counsel fees of Bank and Bank's appraisal fees and audit fees, may be charged directly to any of Borrower's accounts maintained with Bank.
29. Except for the accounts detailed on **Exhibit B** ("Bank of America Accounts"), Borrower will maintain all commercial accounts with Bank. By no later than May 16, 2011, Borrower shall pledge to Bank a first priority security interest on the Bank of America Accounts, in form and substance acceptable to Bank.
30. In addition to all reporting currently required by the Loan Documents, Borrower shall provide Bank:
 - (a) by no later than May 16, 2011, an updated, executed certified personal financial statement (current as of no earlier than March 31, 2011) for Remo Polselli in form satisfactory to Bank;
 - (b) within fifteen (15) days of filing, copies of the filed 2010 federal income tax returns (with all schedules) for Borrower and Guarantors (Bank has received the 2008 and 2009 federal income tax returns for Borrower and Guarantors);
 - (c) any other reporting reasonably requested by Bank.
31. Borrower and Guarantors acknowledge and agree the Loan Documents presently provide and they shall permit Bank to conduct such fair market value appraisals, inspections, surveys and/or testing, whether for environmental contamination or otherwise, that Bank deems necessary, on any and all real and personal property upon which Bank may possess a mortgage or security interest securing the Liabilities, and the cost of such appraisals, inspections, surveys and testing are part of the costs and expenses for which the Borrower and Guarantors must reimburse Bank.
32. Borrower and Guarantors agree to execute any and all additional or supplemental documentation, and provide such further assistance and assurances as Bank may require, in Bank's sole and absolute discretion, to give full effect of the terms, conditions and intentions of this Second Amendment.
33. Notwithstanding anything to the contrary herein, Bank reserves the right, in its sole discretion, to determine the application of the proceeds of all unusual or extraordinary items (including, by way of example, insurance proceeds or sale proceeds, other than collection of accounts for inventory sold in the ordinary course of business) to the various obligations of Borrower to Bank.

34. To the extent any payment received by Bank is deemed a preference, fraudulent transfer or otherwise subject to disgorgement under applicable law, including bankruptcy or insolvency law, which requires the Bank to disgorge such payment then, such payment will be deemed to have never occurred and the Liabilities will be adjusted accordingly.
35. This Second Amendment shall be governed and controlled in all respects by the laws of the State of Michigan, without reference to its conflict of law provisions, including interpretation, enforceability, validity and construction.
36. Bank expressly reserves the right to exercise any or all rights and remedies provided under the Loan Documents and applicable law except as modified herein. Bank's failure to exercise immediately such rights and remedies shall not be construed as a waiver or modification of those rights or an offer of forbearance.
37. This Second Amendment will inure to the benefit of Bank and all its past, present and future parents, subsidiaries, affiliates, predecessors and successor corporations and all of their subsidiaries and affiliates.
38. Bank anticipates that discussions addressing the Liabilities may take place in the future. During the course of such discussions, Bank, Borrower and Guarantors may touch upon and possibly reach a preliminary understanding on one or more issues prior to concluding negotiations. Notwithstanding this fact and absent an express written waiver, neither Bank, Borrower nor any Guarantor will be bound by an agreement on any individual issues unless and until an agreement is reduced to writing and signed by the applicable parties.
39. As of the date of this Second Amendment, there are no other offers outstanding from Bank to Borrower and Guarantors. Any prior offer by Bank, whether oral or written is hereby rescinded in full. There are no oral agreements between Bank and Borrower and Guarantors; any agreements concerning the Liabilities are expressed only in the existing Loan Documents. The duties and obligations of Borrower and Guarantors and Bank shall be only as set forth in the Loan Documents and this Second Amendment, when executed by all parties.
40. Borrower and Guarantors acknowledge that they have reviewed (or have had the opportunity to review) this Second Amendment with counsel of their choice and have executed this Second Amendment of their own free will and accord and without duress or coercion of any kind by Bank or any other person or entity.
41. **BORROWER, GUARANTORS AND BANK ACKNOWLEDGE AND AGREE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR**

MUTUAL BENEFIT WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS SECOND AMENDMENT, THE LOAN DOCUMENTS OR THE LIABILITIES.

42. **DEFAULTS HAVE OCCURRED UNDER THE LOAN DOCUMENTS. BORROWER AND GUARANTORS, TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, WAIVE ALL NOTICES THAT BANK MIGHT BE REQUIRED TO GIVE BUT FOR THIS WAIVER, INCLUDING ANY NOTICES OTHERWISE REQUIRED UNDER SECTION 6 OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE AS ENACTED IN THE STATE OF MICHIGAN OR THE RELEVANT STATE CONCERNING THE APPLICABLE COLLATERAL (AND UNDER ANY SIMILAR RIGHTS TO NOTICE GRANTED IN ANY ENACTMENT OF REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE). FURTHERMORE, BORROWER AND GUARANTORS WAIVE (A) THE RIGHT TO NOTIFICATION OF DISPOSITION OF THE COLLATERAL UNDER § 9-611 OF THE UNIFORM COMMERCIAL CODE, (B) THE RIGHT TO REQUIRE DISPOSITION OF THE COLLATERAL UNDER § 9-620(E) OF THE UNIFORM COMMERCIAL CODE, AND (C) ALL RIGHTS TO REDEEM ANY OF THE COLLATERAL UNDER § 9-623 OF THE UNIFORM COMMERCIAL CODE.**
43. **BORROWER AND GUARANTORS, IN EVERY CAPACITY, INCLUDING, BUT NOT LIMITED TO, AS SHAREHOLDERS, PARTNERS, OFFICERS, DIRECTORS, INVESTORS AND/OR CREDITORS OF BORROWER AND/OR GUARANTORS, OR ANY ONE OR MORE OF THEM, HEREBY WAIVE, DISCHARGE AND FOREVER RELEASE BANK, BANK'S EMPLOYEES, OFFICERS, DIRECTORS, ATTORNEYS, STOCKHOLDERS, AFFILIATES AND SUCCESSORS AND ASSIGNS, FROM AND OF ANY AND ALL CLAIMS, CAUSES OF ACTION, DEFENSES, COUNTERCLAIMS OR OFFSETS AND/OR ALLEGATIONS BORROWER AND/OR GUARANTORS MAY HAVE OR MAY HAVE MADE OR WHICH ARE BASED ON FACTS OR CIRCUMSTANCES ARISING AT ANY TIME UP THROUGH AND INCLUDING THE DATE OF THIS SECOND AMENDMENT, WHETHER KNOWN OR UNKNOWN, AGAINST ANY OR ALL OF BANK, BANK'S EMPLOYEES, OFFICERS, DIRECTORS, ATTORNEYS, STOCKHOLDERS, AFFILIATES AND SUCCESSORS AND ASSIGNS.**
44. **This Second Amendment may be executed in counterparts and delivered by facsimile and the counterparts and/or facsimiles, when properly executed and delivered by the signing deadline, will constitute a fully executed complete agreement.**
45. **Borrower and Guarantors shall properly execute this Second Amendment and deliver same by facsimile so that it is received by the undersigned by no later than 5:00 p.m. on**

Ocean 4660, LLC
May 5, 2011
Page 10

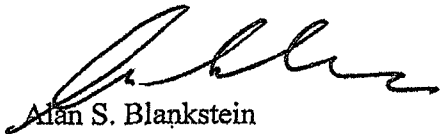
May 9, 2011 with the original to follow so that it is received by the undersigned by no later than May 11, 2011.

Bank reserves the right to terminate its forbearance prior to the Expiration Date, in the event of any new defaults under the Loan Documents, defaults under this Second Amendment, in the event of further deterioration in the financial condition of Borrower or Guarantors or further deterioration in Bank's collateral position, and/or in the event Bank, for any reason, in good faith believes that the prospect of payment or performance is impaired.

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Ocean 4660, LLC
May 5, 2011
Page 11

Very truly yours,



Alan S. Blankstein
Vice President
Special Assets Group
1675 North Military Trail, 6th Floor
Boca Raton, Florida 33486
(561) 961-6689
Fax: (561) 961-6660

ACKNOWLEDGED AND AGREED:

Ocean 4660, LLC

By: _____
Hanna Karcho-Polselli
Its: Managing Member

Date: May ____, 2011

Hanna Karcho-Polselli

Date: May ____, 2011

Remo Polselli

Date: May ____, 2011

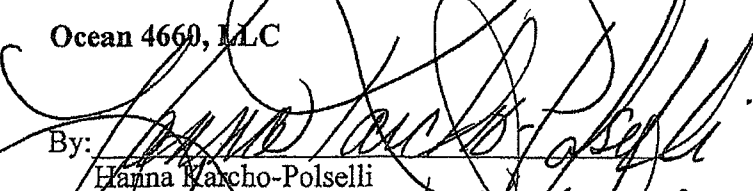
Ocean 4660, LLC
May 5, 2011
Page 11

Very truly yours,

Alan S. Blankstein
Vice President
Special Assets Group
1675 North Military Trail, 6th Floor
Boca Raton, Florida 33486
(561) 961-6689
Fax: (561) 961-6660

ACKNOWLEDGED AND AGREED:

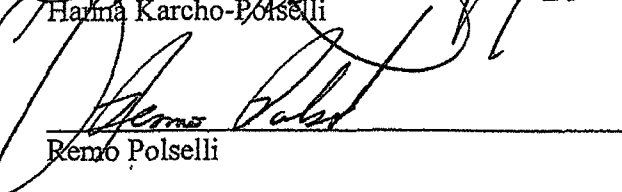
Ocean 4660, LLC

By: 
Hanna Karcho-Polselli
Its: Managing Member

Date: May 9, 2011


Hanna Karcho-Polselli

Date: May 9, 2011


Remo Polselli

Date: May 9, 2011

Exhibit A
Leases of Personal Property

Exhibit B
Bank of America Accounts

Comerica Bank

1675 North Military Trail, 6th Fl.
Boca Raton, FL 33486

October 26, 2011

*Via Email to resortamerica@gmail.com and
Via Federal Express*

Ocean 4660, LLC
Hanna Karcho-Polselli
Remo Polselli
55 E. Long Lake, Suite 204
Troy, Michigan 48085

Re: AGREEMENT DATED JUNE 9, 2010 (AS AMENDED ON SEPTEMBER 3, 2010 AND MAY 5, 2011, THE "FORBEARANCE AGREEMENT") AMONG COMERICA BANK ("BANK"), OCEAN 4660, LLC ("BORROWER"), HANNA KARCHO-POLSELLI AND REMO POLSELLI (IDENTIFIED COLLECTIVELY AS "GUARANTORS")

Dear Ms. Karcho-Polselli and Mr. Polselli:

Undefined capitalized terms in this letter are defined in the Forbearance Agreement.

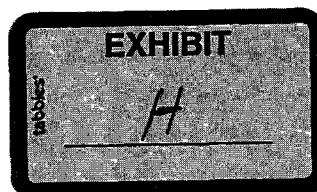
As of October 13, 2011, the Liabilities include, but are not limited to, the following:

<u>Loans (note amount and date)</u>	<u>Principal</u>	<u>Interest</u>	<u>Late Fees</u>
Ocean 4660 Installment Loan (\$10,850,000; 1/3/08, as amended)	\$10,651,445.32	\$135,771.65	\$1,219.87
Ocean 4660 Draw-To Loan (\$1,000,000; 1/3/08, as amended)	\$933,449.13	\$12,990.50	\$116.68

These amounts are exclusive of interest accruing after October 13, 2011, letter of credit reimbursement obligations, swap obligations in the aggregate amount of \$101,844.60, amounts expended by Bank for forced placed insurance, and costs and expenses (including, but not limited to, reasonable inside and outside counsel fees). The above amounts also do not include Bank's separate loans to H.K. Hotel Management, LLC and Hanna Karcho-Polselli.

The Forbearance Agreement required satisfaction of certain conditions within specific time frames. Borrower and Guarantors have failed to meet a number of these conditions. These failures are defaults under the May 5, 2011 Second Amendment to the Forbearance Agreement as follows:

- (A) Borrower failed to pay to Bank the sum of \$78,229.44 to reimburse Bank for a portion of the protective advance for 2009 and 2010 real property



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taxes, which payment was due by July 31, 2011 under Section 6 of the Second Amendment;

- (B) Borrower has not provided to Bank by May 31, 2011 evidence that the conditions of Section 13 (discharge of certain liens) have been met;
- (C) Borrower has not delivered to Bank by May 31, 2011 an executed Non-Disturbance and Attornment Agreement (Prime Landlord) and Landlord's Consent, as required under Section 19;
- (D) Borrower has not pledged to Bank a first priority security interest in the Bank of America Accounts by May 16, 2011 as required under Section 29;
- (E) Borrower has failed to deliver to Bank by May 16, 2011 a fully executed personal financial statement for Remo Polselli, as described in Section 30; and
- (F) Borrower has not caused to be discharged all liens, notices of pendency, lis pendens or any other documents recorded in the real property records against the Hotel (or with respect to any liquor licenses owned by Borrower) by Oceanside Lauderdale, Inc., Kenneth A. Frank, Angela DiPilato or any other party related to any of the foregoing by July 31, 2011, as required under Section 13.

Other defaults may exist as well.

As a result of the defaults, Bank hereby terminates its forbearance under the Forbearance Agreement.

From and after the date of this letter, interest shall accrue on the Liabilities at the default rate under the Loan Documents, as set forth in Section 9 of the May 5, 2011 Second Amendment to the Forbearance Agreement.

Bank reserves all of its rights and remedies under the Loan Documents and applicable law, including but not limited to the right to commence foreclosure with respect to any and all collateral securing the Liabilities, any or all of which rights and remedies may be exercised by Bank without further notice. Bank's failure to exercise any such right or remedy shall not be construed as a waiver or modification of those rights or as an offer of forbearance.

Ocean 4660, LLC
October 26, 2011
Page 3

Nothing in this letter shall constitute a waiver of any default. Bank's forbearance from taking action to collect the Liabilities is from day to day in Bank's sole discretion.

Very truly yours,



Alan S. Blankstein
Vice President
Special Assets Group
1675 North Military Trail, 6th Floor
Boca Raton, Florida 33486
(561) 961-6689
Fax: (561) 961-6660

cc: Brian R. Trumbauer
Brian Hole
Krystol Rappuhn