



## **VENTURA PORT DISTRICT BOARD OF PORT COMMISSIONERS**

Jim Friedman, Chairman  
Everard Ashworth, Vice Chairman  
Bruce E. Smith, Commissioner  
Gregory Carson, Commissioner  
Nikos Valance, Commissioner

Oscar Peña, General Manager  
Timothy Gosney, Legal Counsel  
Dominic Nunneri, Legal Counsel  
Jessica Rauch, Clerk of the Board

---

### **PORT COMMISSION WORKSHOP MEETING AGENDA WEDNESDAY, APRIL 13, 2016 AT 12:00PM VENTURA PORT DISTRICT OFFICE 1603 ANCHORS WAY DRIVE, VENTURA, CA**

*A **Closed Session** of the Board will be held at approximately **11:00AM** in the Port District Office located at 1603 Anchors Way Drive, Ventura, California to discuss items on the Attachment to Agenda-Closed Session Conference with Legal Counsel and then reconvene thereafter to adjourn the Workshop.*

*The Board will convene in **Open Session** at the Port District Office located at 1603 Anchors Way Drive for its Special Meeting-Workshop at **12:00PM***

#### **ADMINISTRATIVE AGENDA:**

**CALL TO ORDER:** *By Chair Jim Friedman.*

**PLEDGE OF ALLEGIANCE:** *By Chair Jim Friedman.*

**ROLL CALL:** *By the Clerk of the Board.*

#### **ADOPTION OF AGENDA (5 minutes)**

*Consider and approve, by majority vote, minor revisions to agenda items and/or attachments and any item added to, or removed/continued from the Port Commission's agenda. Administrative Reports relating to this agenda and materials related to an item on this agenda submitted after distribution of the agenda packet are available for public review at the Port District's office located at 1603 Anchors Way Drive, Ventura, CA during business hours as well as on the District's website - [www.venturaharbor.com](http://www.venturaharbor.com) (Port Commission). Each item on the agenda shall be deemed to include action by an appropriate motion, resolution or ordinance to take action on any item.*

#### **APPROVAL OF MINUTES**

*The Minutes of the March 23, 2016 regular meeting will be considered for approval.*

#### **PUBLIC COMMUNICATIONS (3 minutes)**

*The Public Communications period is set aside to allow public testimony on items not on today's agenda. Each person may address the Commission for up to three minutes or at the discretion of the Chair.*

#### **CLOSED SESSION REPORT (3 minutes)**

*Closed Sessions are not open to the public pursuant to the Brown Act. Any reportable actions taken by the Commission during Closed Session will be announced at this time.*

**BOARD COMMUNICATIONS (5 minutes)**

*Port Commissioner's may present brief reports on port issues, such as seminars, meetings and literature that would be of interest to the public and/or Commission, as a whole. Port Commissioner's must provide a brief summary and disclose any discussions he or she may have had with any Port District Tenants related to Port District business.*

**STAFF COMMUNICATIONS (5 minutes)**

*Ventura Port District Staff will update the Commission on important topics if needed.*

**CONSENT AGENDA: (5 minutes)**

*Matters appearing on the Consent Calendar are expected to be non-controversial and will be acted upon by the Board at one time, without discussion, unless a member of the Board or the public requests an opportunity to address any given item. Approval by the Board of Consent Items means that the recommendation is approved along with the terms set forth in the applicable staff reports.*

**A) Approval of New Office Lease Agreement for Farmers Insurance**

Recommended Action: Motion.

That the Board of Port Commissioners approve a new office lease agreement for the premises located at 1583 Spinnaker Drive #211 consisting of 492 square feet between the Ventura Port District dba Ventura Harbor Village and Farmers Insurance for a two-year term.

**B) Approval of New Office Lease Agreement for John Francis**

Recommended Action: Motion.

That the Board of Port Commissioners approve a new office lease agreement for the premises located at 1583 Spinnaker Drive #203A consisting of 123 square feet between the Ventura Port District dba Ventura Harbor Village and John Francis for a two-year term.

**ACTION ITEM: (5 minutes)**

**1) Notice of Completion for the Emergency Conditions at 1691 Spinnaker Drive**

Recommended Action: Resolution No. 3304.

That the Board of Port Commissioners adopt Resolution No. 3304,

- a) Determining that there is no longer a need to continue the emergency action adopted by the Board on January 13, 2016 since the emergency has been abated and the project completed;
- b) Accepting the work of Letner Roofing Company for the emergency installation of a tile roof system at 1691 Spinnaker Drive; and
- c) Authorizing staff to prepare and record a Notice of Completion with the Ventura County Recorder.

**WORKSHOP ITEM: (30 minutes)**

**1) Ventura Isle Marina (VIM) Assignment of Lease**

Recommended Action: Motion.

That the Board of Port Commissioners approve the Assignment of Lease for Ventura Isle Marina from CLP Ventura Marina, LLC, ("CLP") CLP to SHM Ventura Isle, LLC ("SHM Ventura Isle").

**REQUEST FOR FUTURE AGENDA ITEMS**

**ADJOURNMENT**

*This agenda was posted on Wednesday, April 6, 2016 at 5:00 p.m., at the  
Port District Office and on the Internet - [www.venturaharbor.com](http://www.venturaharbor.com) (Port Commission).*

♦

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this  
meeting, please contact the Ventura Port District at (805) 642-8538. Notification 48 hours before the meeting  
will enable the District to make reasonable arrangements to ensure accessibility.*

*(28 CFR 35.102.35.104 ADA Title II)*

**ATTACHMENT TO PORT COMMISSION AGENDA  
CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL**

**WEDNESDAY, APRIL 13, 2016**

**1. Conference with Real Property Negotiators - Per Government Code Section 54956.8:**

- |                      |  |
|----------------------|--|
| a) Property:         | <b>1583 Spinnaker Drive #211</b>                 |
| Negotiating Parties: | Oscar Peña, Brian Pendleton, Timothy Gosney      |
| Under Negotiation:   | New Office Lease Agreement for Farmers Insurance |
|                      |  |
| b) Property:         | <b>1583 Spinnaker Drive #203A</b>                |
| Negotiating Parties: | Oscar Peña, Brian Pendleton, Timothy Gosney      |
| Under Negotiation:   | New Office Lease Agreement for John Francis      |
|                      |  |
| c) Property:         | <b>1575 Spinnaker Drive #101, #102</b>           |
| Negotiating Parties: | Oscar Peña, Brian Pendleton, Timothy Gosney      |
| Under Negotiation:   | Copa Cubano Update                               |
|                      |  |
| d) Property:         | <b>1363 Spinnaker Drive, Parcels 2 &amp; 3</b>   |
| Negotiating Parties: | Oscar Peña, Brian Pendleton, Timothy Gosney      |
| Under Negotiation:   | Ventura Isle Marina Lease Assignment             |

**2. Conference with Legal Counsel - Potential Litigation per Government Code Section 54956.9(d)(2): One case.**

**3. Conference with Legal Counsel – Pending Litigation per Government Code Section 54956.9(e)(1) – Ventura Port District, dba Ventura Harbor Village v. Jack Benjamin Hessiani Ventura Superior Court Case No. 56-2015-00470864-CU-PT-VTA.**



# BOARD OF PORT COMMISSIONERS

APRIL 13, 2016

APPROVAL OF MINUTES

MARCH 23, 2016



## **Minutes of Regular Meeting of the Ventura Port District Board of Port Commissioners Held March 23, 2016**

---

The Regular Meeting of the Ventura Board of Port Commissioners was called to order by Chairman Jim Friedman at 7:02PM at the Ventura Port District Office located 1603 Anchors Way Drive, Ventura, CA 93001.

### **Commissioners Present:**

Jim Friedman, Chair  
Everard Ashworth, Vice Chair  
Gregory L. Carson  
Bruce E. Smith  
Nikos Valance

### **Commissioners Absent:**

None

### **Port District Staff:**

Oscar Peña, General Manager  
Brian Pendleton, Business Operations Manager  
Jennifer Talt-Lundin, Marketing Manager  
John Higgins, Harbormaster  
Joe Gonzalez, Facilities Manager  
Frank Locklear, Marina Manager  
Robin Baer, Property Manager  
Gloria Adkins, Accounting Manager  
Richard Parsons, Consultant  
Jessica Rauch, Clerk of the Board

### **Legal Counsel:**

Timothy Gosney  
Dominic Nunneri

## **AGENDA**

**CALL TO ORDER:** By Chairman Jim Friedman at 7:02PM.

**PLEDGE OF ALLEGIANCE:** By Commissioner Friedman.

**ROLL CALL:** All Commissioners were present.

### **ADOPTION OF AGENDA**

**ACTON:** Commissioner Smith moved, seconded by Commissioner Carson and carried by a vote of 5-0 to adopt the March 23, 2016 agenda.

### **APPROVAL OF MINUTES**

The Minutes of March 9, 2016 workshop meeting were considered as follows:

**ACTION:** Commissioner Carson moved, seconded by Commissioner Ashworth and carried by a vote of 5-0 to approve the minutes of the March 9, 2016 workshop meeting.

**PUBLIC COMMUNICATIONS:** Sam Sadove mentioned to the Commission that the 805 Jet Ski people are telling the public to meet them on Sam's property to ride jet skis. Mr. Sadove has informed his staff of this and told them to contact him if they see him and he will call the police for trespassing.

**CLOSED SESSION REPORT:** Mr. Gosney stated that the Board met in closed session; discussed and reviewed all items on the closed session agenda. Staff was given instructions as to how to proceed as appropriate and there was no action taken that is reportable under The Brown Act.

**BOARD COMMUNICATIONS:** Commissioner Ashworth reported on the CMANC Conference in Washington D.C. and his meeting with Aquaculture for the shellfish grant. Commissioner Carson also reported on the CMANC Conference in Washington D.C. and the meeting with NOAA.

**DEPARTMENTAL STAFF REPORTS:** Mr. Pendleton updated the Commission on the real estate Request for Proposals and parking management strategy. He also introduced new tenant Tuesday Spagnuolo, owner of Addicted to Socks. Mr. Parsons updated the Commission on the current dredging operation.

**GENERAL MANAGER REPORT:** Mr. Peña reported that staff has been working diligently on the new fiscal year budget. He also congratulated Marina Manager, Frank Locklear on his 10 years with the District and Facilities Manager, Joe Gonzalez on his upcoming 30 years with the District. Mr. Pena reported that ADA Phase 2 will be starting mid-April and that staff met with RRM to discuss the plans for Phase 3.

**LEGAL COUNSEL REPORT:** None.

**CONSENT AGENDA:**

**A) Approval of New Office Lease Agreement for David A. Richard**

Recommended Action: Motion.

That the Board of Port Commissioners approve a new office lease agreement for the premises located at 1591 Spinnaker Drive #205 consisting of 1,050 square feet between the Ventura Port District dba Ventura Harbor Village and David A. Richard for a two-year term.

**ACTION:** Commissioner Ashworth moved seconded by Commissioner Carson and carried by a vote of 5-0 to approve a new office lease agreement for the premises located at 1591 Spinnaker Drive #205 consisting of 1,050 square feet between the Ventura Port District dba Ventura Harbor Village and David A. Richard for a two-year term.

**B) Approval of New Office Lease Agreement for Ron Baldonado**

Recommended Action: Motion.

That the Board of Port Commissioners approve a new office lease agreement for the premises located at 1591 Spinnaker Drive #201 consisting of 755 square feet between the Ventura Port District dba Ventura Harbor Village and Ron Baldonado for a two-year term.

**ACTION:** Commissioner Ashworth moved seconded by Commissioner Carson and carried by a vote of 5-0 to approve a new office lease agreement for the premises located at 1591 Spinnaker Drive #201 consisting of 755 square

**feet between the Ventura Port District dba Ventura Harbor Village and Ron Baldonado for a two-year term.**

**C) Approval of New Retail Lease Agreement for Addicted to Socks**

Recommended Action: Motion.

That the Board of Port Commissioners approve a new retail lease agreement for the premises located at 1575 Spinnaker Drive #107A consisting of 565 square feet between the Ventura Port District dba Ventura Harbor Village and Addicted to Socks for a two-year term.

**ACTION: Commissioner Ashworth moved seconded by Commissioner Carson and carried by a vote of 5-0 to approve a new retail lease agreement for the premises located at 1575 Spinnaker Drive #107A consisting of 565 square feet between the Ventura Port District dba Ventura Harbor Village and Addicted to Socks for a two-year term.**

**D) Approval of Out of Town Travel Request**

Recommended Action: Motion.

That the Board of Port Commissioners approve the Out of Town Travel Request for Harbormaster, John Higgins.

**ACTION: Commissioner Ashworth moved seconded by Commissioner Carson and carried by a vote of 5-0 to approve the Out of Town Travel Request for Harbormaster, John Higgins.**

**E) Approval of Revisions to Exhibit A of the Procurement and Purchasing Policy**

Recommended Action: Motion.

That the Board of Port Commissioners approve the revisions to Exhibit A – Ventura Port District Employee Procurement Status Chart of the Ventura Port District's Procurement and Purchasing Policy.

**ACTION: Commissioner Ashworth moved seconded by Commissioner Carson and carried by a vote of 5-0 to approve the revisions to Exhibit A – Ventura Port District Employee Procurement Status Chart of the Ventura Port District's Procurement and Purchasing Policy.**

**STANDARD AGENDA:**

**1) Approval of Financial Statements and Checks for the month of January 2016**

Recommended Action: Resolution No. 3300.

That the Board of Port Commissioners adopt Resolution No. 3300 accepting and approving the Financial Statements, Payroll and Regular Checks for expenses in January 2016.

**ACTION: Commissioner Ashworth moved, seconded by Commissioner Carson and carried by a vote of 5-0 to adopt Resolution No. 3300 accepting and approving the Financial Statements, Payroll and Regular Checks for expenses in January 2016.**

**2) Refinancing of the District's DBAW Loans (1998 & 2005)**

Recommended Action: Resolution No. 3301.

That the Board of Port Commissioners adopt Resolution No. 3301 approving an installment purchase agreement and a private placement agreement, and authorizing the taking of certain



actions in connection with the execution and delivery of Refunding Certificates of Participation, Series 2016 in the aggregate principal amount not to exceed \$4,850,000.

**ACTION:** Commissioner Smith moved, seconded by Commissioner Carson and carried by a vote of 5-0 to adopt Resolution No. 3301 approving an installment purchase agreement and a private placement agreement, and authorizing the taking of certain actions in connection with the execution and delivery of Refunding Certificates of Participation, Series 2016 in the aggregate principal amount not to exceed \$4,850,000.

### **3) Consideration of Adoption of Ordinance No. 50**

Recommended Action: Ordinance No. 50.

That the Board of Port Commissioners:

- a) Conduct a public hearing for the purpose of receiving input on proposed Ordinance 50;
- b) Read proposed Ordinance No. 50 for the record; and
- c) Adopt Ordinance No. 50, which authorizes execution of the Lease between Ventura Port District and Del Mar Seafoods, Inc., 1449 Spinnaker Drive #C, #E, and #G.

**ACTION:** Chairman Friedman opened the public hearing at 7:38PM for the purpose of receiving input on proposed Ordinance 50. The Board Secretary read proposed Ordinance 50 into the record. There were two public comments. The public hearing was closed by Chairman Friedman at 7:41PM.

**Public Comment:** Mike Byrne, Operations Manager for Del Mar Seafoods, is excited for the new lease and sees that the expansion will be necessary for the future success of the fishing industry. Sam Sadove wanted to make sure that the ice house will be open to all fishermen, not just the Del Mar boats.

**ACTION:** Commissioner Ashworth moved, seconded by Commissioner Smith and carried by a vote of 5-0 to Adopt Ordinance No. 50, which authorizes execution of the Lease between Ventura Port District and Del Mar Seafoods, Inc., 1449 Spinnaker Drive #C, #E, and #G.

### **4) Update on Emergency Conditions at 1691 Spinnaker Drive**

Recommended Action: 4/5ths vote.

That the Board of Port Commissioners determine by a four-fifths vote that there is a need to continue the emergency action adopted by the Board on January 13, 2016 to award a contract to Letner Roofing Company to replace the tile roof system on 1691 Spinnaker Drive without giving notice for bids to let a contract.

**ACTION:** Commissioner Ashworth moved, seconded by Commissioner Carson and carried by a vote of 5-0 to determine by a four-fifths vote that there is a need to continue the emergency action adopted by the Board on January 13, 2016 to award a contract to Letner Roofing Company to replace the tile roof system on 1691 Spinnaker Drive without giving notice for bids to let a contract.

### **5) Approval of New Expense Reimbursement Policy for Ventura Port District Employees**

Recommended Action: Resolution No. 3302.

That the Board of Port Commissioners adopt Resolution No. 3302, approving the new Ventura Port District Expense Reimbursement Policy for Employees and rescind Resolution No. 3046.

**ACTION:** Commissioner Carson moved, seconded by Commissioner Ashworth and carried by a vote of 5-0 to adopt Resolution No. 3302, approving the new Ventura Port District Expense Reimbursement Policy for Employees and rescind Resolution No. 3046.

**6) Approval of Revised Expense Reimbursement Policy for Port Commissioners**

Recommended Action: Resolution No. 3303.

That the Board of Port Commissioners adopt Resolution No. 3303, revising the Ventura Port District Expense Reimbursement Policy for Members of the Board of Port Commissioners, and rescinding Resolution No. 3266.

**ACTION:** Commissioner Smith moved, seconded by Commissioner Ashworth and carried by a vote of 5-0 to adopt Resolution No. 3303, revising the Ventura Port District Expense Reimbursement Policy for Members of the Board of Port Commissioners, and rescinding Resolution No. 3266 with the following revision:

**3. Other Events and Expenditures, ii. Meals:**

ii. Meals. A Commissioner shall be reimbursed for the actual cost of meals and incidentals, including tips not to exceed 20% of the subtotal, incurred as part of an outside event approved by the Board, upon approval of the Expense Report by the General Manager pursuant to Section 5. The cost of alcoholic beverages will not be reimbursed and itemized receipts are required for all meals with the Expense Report. The cost of meals taken outside of such events shall be reimbursed up to a maximum of the following amounts per person:

Breakfast..... \$20.00  
Lunch..... \$30.00  
Dinner..... \$45.00

**7) Discussion on Chairman Appointments**

Recommended Action: Resolution No. 3303.

That the Board of Port Commissioners discuss and take appropriate action on Chairman Appointments of the Board for liaison positions.

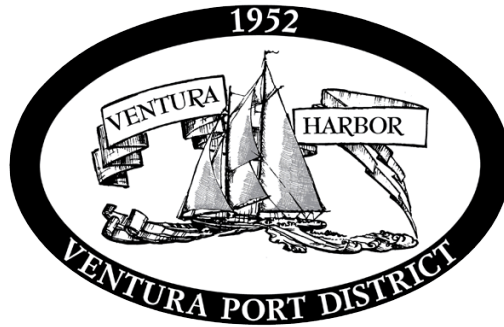
**ACTION:** Commissioner Smith moved, seconded by Commissioner Valance and carried by a vote of 5-0 to direct staff to clarify in the “Board of Port Commissioners Protocols and Policies Manual” that liaison appointments can be raised by any commissioner and follow the procedure of “Future Agenda Items,” by getting consensus then bringing it back at a future meeting for approval.

**REQUEST FOR FUTURE AGENDA ITEMS:** None.

**ADJOURNMENT:** The meeting was adjourned at 8:19PM.

---

Secretary



# BOARD OF PORT COMMISSIONERS

APRIL 13, 2016

## CONSENT AGENDA ITEM A

APPROVAL OF NEW OFFICE LEASE  
AGREEMENT FOR  
FARMERS INSURANCE

**VENTURA PORT DISTRICT**  
**BOARD COMMUNICATION**

**CONSENT AGENDA ITEM A**  
Meeting Date: April 13, 2016

---

TO: Board of Port Commissioners  
FROM: Robin Baer, Property Manager  
SUBJECT: Approval of New Office Lease Agreement for Farmers Insurance  
1583 Spinnaker Drive #211

---

**RECOMMENDATION:**

That the Board of Port Commissioners approve a new office lease agreement for the premises located at 1583 Spinnaker Drive #211 consisting of 492 square feet between the Ventura Port District dba Ventura Harbor Village and Farmers Insurance for a two-year term.

**BACKGROUND:**

Mr. Frankie Mark Anthony, Farmers Insurance Agent has been a tenant since May 2014. He has been a good standing tenant and would like to continue to be a Ventura Harbor Village tenant.

**FISCAL IMPACT:**

This new lease reflects current market rental rates for office space in the complex. The lease will have yearly step increases.

We look forward to continued success with this tenant. Staff recommends the Board's approval of the new lease transaction.



# BOARD OF PORT COMMISSIONERS

APRIL 13, 2016

## CONSENT AGENDA ITEM B

APPROVAL OF NEW OFFICE LEASE  
AGREEMENT FOR JOHN FRANCIS

**VENTURA PORT DISTRICT**  
**BOARD COMMUNICATION**

**CONSENT AGENDA ITEM B**  
Meeting Date: April 13, 2016

---

TO: Board of Port Commissioners  
FROM: Robin Baer, Property Manager  
SUBJECT: Approval of New Office Lease Agreement for John Francis  
1583 Spinnaker Drive #203A

---

**RECOMMENDATION:**

That the Board of Port Commissioners approve a new office lease agreement for the premises located at 1583 Spinnaker Drive #203A consisting of 123 square feet between the Ventura Port District dba Ventura Harbor Village and John Francis for a two-year term.

**BACKGROUND:**

John Francis has been a tenant since 1997. We have re-negotiated with the tenant and he will now be signing a two-year term.

**FISCAL IMPACT:**

This new lease reflects current market rental rates for office space in the complex. The lease will have yearly step increases.

We look forward to continued success with this tenant. Staff recommends the Board's approval of the new lease transaction.



# BOARD OF PORT COMMISSIONERS

APRIL 13, 2016

## STANDARD AGENDA ITEM 1

NOTICE OF COMPLETION FOR THE  
EMERGENCY CONDITIONS AT  
1691 SPINNAKER DRIVE

**VENTURA PORT DISTRICT  
BOARD COMMUNICATION**

**STANDARD AGENDA ITEM 1**  
Meeting Date: April 13, 2016

---

TO: Board of Port Commissioners  
FROM: Joe Gonzalez, Facilities Manager  
SUBJECT: Notice of Completion for the Emergency Conditions at 1691 Spinnaker Drive

---

**RECOMMENDATION:**

That the Board of Port Commissioners adopt Resolution No. 3304,

- a) Determining that there is no longer a need to continue the emergency action adopted by the Board on January 13, 2016 since the emergency has been abated and the project completed;
- b) Accepting the work of Letner Roofing Company for the emergency installation of a tile roof system at 1691 Spinnaker Drive; and
- c) Authorizing staff to prepare and record a Notice of Completion with the Ventura County Recorder.

**SUMMARY:**

At the end of January, high winds caused dangerous conditions at 1691 Spinnaker Drive. On January 13, 2016, the Board of Port Commissioners determined by a four-fifths vote, and have done so at all past meetings since then, that an emergency exists necessitating issuance of a contract to Letner Roofing Company to replace the tile roof system without giving notice for bids to let a contract and following normal contracting procedure.

The purchase order with Letner Roofing Company for emergency tile roof work was sent January 27, 2016. Letner mobilized their equipment and material for replacing the tile roof on February 18<sup>th</sup>. Work was commenced around February 22<sup>nd</sup> and was completed on March 31, 2016.

Staff communicated with the 1691 tenants, daily during the project to make sure the construction was not interfering with their daily tasks.

**ATTACHMENTS:**

Attachment 1 - Resolution No. 3304  
Attachment 2 - Notice of Completion



ATTACHMENT 1



**RESOLUTION NO. 3304**

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS  
OF THE VENTURA PORT DISTRICT  
ACCEPTING THE WORK OF LETNER ROOFING COMPANY  
UNDER CONTRACT FOR THE EMERGENCY  
INSTALLATION OF A TILE ROOF SYSTEM  
AT 1691 SPINNAKER DRIVE**

WHEREAS, Oscar F. Peña, General Manager of the Ventura Port District, advised the Board of Port Commissioners of said District that the work of Letner Roofing Company on the project entitled "1691 Spinnaker Drive Emergency Tile Roof Repair and Replacement" described in the Purchase Order between Letner Roofing Company and the Ventura Port District, hereinafter referred to as "District", dated January 22, 2016, has been completed and recommends that said work be accepted.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners DETERMINES and ORDERS as follows:

1. Said work is hereby accepted.
2. Pursuant to the conditions and specifications of the Agreement and upon the recommendation of the General Manager, Letner Roofing Company is released from the obligations under said contract, except as to the conditions of the performance bond, required guarantees and correction of faulty work after payment.
3. The General Manager of the District is hereby directed to execute on behalf of the District, or cause to be executed on behalf of the District, and be recorded in the office of the Ventura County Recorder a Notice of Completion of said work.
4. The General Manager is hereby directed to send a copy of this Resolution to Letner Roofing Company as the District's Notice of Acceptance of said work.

PASSED, APPROVED and ADOPTED this 13th day of April 2016.

\_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Secretary  
(Seal)



ATTACHMENT 1

STATE OF CALIFORNIA                    )  
COUNTY OF VENTURA                ) ss.  
CITY OF SAN BUENAVENTURA        )

I, Oscar Peña, Secretary of the Ventura Port District, a public corporation, do hereby certify that the above and foregoing Resolution No. \_\_\_\_ was duly passed and adopted by the Board of Port Commissioners of said District at a regular meeting thereof held on the 13th day of April 2016, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAINED:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said District this 13th day of April 2016.

\_\_\_\_\_  
Secretary

(Seal)

## ATTACHMENT 2

RECORDING REQUESTED BY:  
Ventura Port District

AND WHEN RECORDED MAIL TO:  
Ventura Port District  
1603 Anchors Way Drive  
Ventura, CA 93001-4229

---

### NOTICE OF COMPLETION

(Notice pursuant to Civil Code Section 3093, must be recorded within 10 days after completion)

#### NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is an agent of the owner of the interest stated below.
2. The full name of the owner is Ventura Port District, a public benefit corporation and independent special district organized and existing under the laws of the State of California.
3. The full address of the owner is 1603 Anchors Way Drive, Ventura, CA 93001-4229.
4. The nature of the interest or estate is: fee simple.
5. The full name and full addresses of all co-owners who hold any title or interest with the above-named owner in the property are: Not applicable; there are no co-owners.
6. A work of improvement on the property hereinafter described was completed on March 31, 2016.
7. The work accomplished consisted of the emergency installation a tile roof system.
8. The name of the contractor for the installation of a tile roof system is Letner Roofing Company, pursuant to a purchase order, dated January 22, 2016.
9. The property on which said work of improvement was completed is in the City of San Buenaventura, County of Ventura, State of California, and is described as 1691 Spinnaker Drive.

Ventura Port District

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Oscar F. Peña, General Manager

---

#### VERIFICATION

I, the undersigned, say that I am the General Manager of the declarant of the foregoing completion; I have read said Notice of Completion and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, at Ventura, California.

---

Oscar F. Peña, General Manager



# BOARD OF PORT COMMISSIONERS

APRIL 13, 2016

WORKSHOP AGENDA ITEM 1  
VENTURA ISLE MARINA (VIM)  
ASSIGNMENT OF LEASE

**VENTURA PORT DISTRICT  
BOARD COMMUNICATION**

**WORKSHOP AGENDA ITEM 1**  
Meeting Date: April 13, 2016

---

TO: Board of Port Commissioners  
FROM: Brian Pendleton, Business Operations Manager  
SUBJECT: Ventura Isle Marina (VIM) Assignment of Lease

---

**RECOMMENDATION:**

That the Board of Port Commissioners approve and authorize the General Manager to sign:

1. Consent to Assignment of Lease and Leasehold Deed of Trust for Ventura Isle Marina from CLP Ventura Marina, LLC, ("CLP") CLP to SHM Ventura Isle, LLC ("SHM Ventura Isle"); and
2. Amendment No. 3 to 2003 VIM Master Lease.

**SUMMARY:**

On May 20, 2015 CLP Ventura Marina, LLC, ("CLP") delivered a Proposed Assignment Notice to the District pursuant to the Ground Lease ("Lease") between the District and CLP, the District's current lessee at Ventura Isle Marina ("VIM"). The proposed assignee is Safe Harbors Marinas, LLC ("SHM") through its subsidiary SHM Ventura Isle, LLC ("SHM Ventura Isle"). SHM is the "parent company" for the transaction and guarantor of the Lease.

**BACKGROUND:**

The District entered into a ground lease with Ventura Isle Marina, L.P. dated November 19, 2003. The lease was amended twice, first in 2006 and then again in 2010. Also occurring in 2010 was the Assignment of Lease from Ventura Isle Marina, L.P. to CLP. Approximately 5 years later, on May 20, 2015 CLP delivered to the District a Proposed Assignment Notice pursuant to the Lease. CLP has been seeking to sell its interests in 27 public and private marinas throughout the country and has already completed many of these transactions. The District had the option to acquire the ground lease by matching SHM's purchase price which is approximately \$13,300,000 million. After careful review and evaluation, the District gave notice on July 10, 2015 that it would waive its right to do so. On July 24, 2015 CLP delivered a draft Consent to Assignment of Lease and Leasehold Deed of Trust to begin the assignment process with SHM. The proposed assignment to SHM has been the subject of District review, consideration and negotiation with CLP and SHM since that time.

**Consent to Assignment of Lease and Leasehold Deed of Trust**

The Consent to Assignment of Lease and Leasehold Deed of Trust provides for the District's consent to the assignment and the leasehold deed of trust. It also terminates and releases CLP from its guaranty of the lease and provides an estoppel certificate that among other things provides that the current tenant CLP has performed its obligations under the Lease. However, the District maintains the right to conduct a financial audit of CLP within 120 days of the assignment. Only CLP would be responsible if the audit determined there were any rental underpayments to the District. Further SHM Ventura Isle would not be in default of the Lease due to a CLP rental underpayment.

**Amendment No. 3 to Ground Lease**

The term of the Lease is through November 18, 2053 unless terminated earlier pursuant to the Lease. This is consistent with the original Lease term. Major provisions of the Amendment No. 3 to Ground Lease include replacement of certain VIM dock(s) and District use of a portion of the VIM parking lot.

SHM Ventura Isle is required to retain an engineer within 30 days of the executed Amendment No. 3 to develop a plan for the replacement and possible reconfiguration of docks G, H and I (Phase I Dock

Work). That plan will be submitted to the District within three (3) months. Once approved by the District, SHM Ventura Isle will have three (3) years to complete the Phase I Dock Work. Within two (2) years of the executed Amendment No. 3, SHM Ventura Isle is required to retain an engineer to develop a plan for the replacement and possible reconfiguration of docks L and M (Phase II Dock Plan). That plan will be submitted to the District within three (3) months. Once approved by the District, SHM Ventura Isle will have three (3) years to complete the Phase II Dock Work.

SHM Ventura Isle has agreed to provide the District with exclusive use of a portion of its parking lot containing 150 parking stalls referred to as the Parking Area. The Parking Area can be used by the District for passenger vehicle parking and shuttle service and is located in the southwesterly portion of the parking lot immediately adjacent to the Ventura Harbor Boatyard. The District will be responsible for maintaining the Parking Area and returning it to SHM Ventura Isle in the future in substantially the same condition. The District will have use of the Parking Area until such time that SHM Ventura Isle has obtained necessary governmental approvals (including the District) to construct improvements at Ventura Isle Marina that would necessitate fifty percent (50%) or more of the Parking Area. If improvements require less than 50% of the Parking Area, the District will retain the remainder.

### **Financing Documents**

The financing for this lease assignment is set forth in three documents: a Credit Agreement, a Security Agreement and a Leasehold Deed of Trust. Legal counsel reviewed each of these documents to ensure that their terms are consistent with the 2003 VIM Master Lease, as amended.

The acquisition will be funded by a loan from a consortium of lenders funding SHM's total transaction of multiple marinas, but only \$6,650,000 of that loan will go to the acquisition of the marina in Ventura Harbor, and the balance of the \$13,300,000 purchase price will be cash from SHM Ventura Isle. The loan will be secured by a separate leasehold deed of trust secured the Ventura Isle Marina leasehold. SHM Ventura Isle is the signatory on that deed of trust, since it is the lessee under the assignment, not SHM. However, SHM is guaranteeing the ground lease.

The leasehold deed of trust provides that SHM Ventura Isle may take future advances under the financing documents which will be secured by the leasehold deed of trust, but the total loan secured by that deed of trust cannot exceed \$11,900,000. What this means is that the new lessee, SHM Ventura Isle, has an additional \$5,250,000 available to pay for capital improvements in the marina as required by the amended lease, presumably the cost of replacing the docks. The consent document requires that SHM Ventura Isle give the District prior notice of any advances and, unless the District objects, the advances are deemed approved.

In addition, since the current lessee CLP is exiting the marina industry altogether, it is demanding that it be fully and completely released from any liability under the ground lease. Likewise, SHM Ventura Isle and SHM are demanding that they have no liability for any obligations under the ground lease prior to the effective date of the lease assignment. Under California law, an assignor is not released from liability from the underlying lease without an express release from the landlord to that effect and normally an assignee takes a lease subject to all liabilities and obligations of the lessee under the lease. CNL and SHM are making such protections conditions of the assignment to which the District must agree.

Similarly, the lenders are requiring that the District represent that the lessee has fully performed all obligations under the lease and that there is no basis for a claim for non-performance that could give rise to a right to terminate the ground lease. Because of these requirements, the lease was reviewed to determine if there were any potential rights of the District as Lessor that might be prejudiced by the making of such representations. That review noted that the right to audit the lessee's percentage rent

reports was the only prospective right that might be impacted by the required representations. Accordingly, the right to audit those reports and to seek relief only from CLP for any underpayments in percentage rents was carved out of the waiver of rights in the consent document. But, this right must be exercised, if at all, within 120 days after closing of the transaction.

Other than the linkage of the financing arrangement to the overall SHM transaction involving multiple marinas, there was very little out of the ordinary in this transaction. There is no cross-collateralization with the other marinas or properties. The Ventura Harbor operation is in a "stand alone" posture with respect to other marinas. However, SHM, as the "Parent Company" in all this, has ownership and/or control of all the assets, but all the liabilities are on SHM Ventura Isle's side as the borrower under the credit agreement, security agreement and the deed of trust, but SHM, as the guarantor of all the ground lease is not without direct exposure.

Where there is any conflict or inconsistency between the financing documents and the ground lease, the terms of the ground lease prevail.

#### **FISCAL IMPACTS:**

The District will receive a one-time payment from CLP in the amount of approximately \$600,000 for the Assignment of Lease as required by the Ground Lease. This one-time payment is called "Appreciation Rent" and is calculated whenever there is an Assignment of Lease. This last occurred in 2010. The methodology for payment is provided for in the Ground Lease, but the parties have agreed the appreciation rent and reimbursement of the District's legal fees will be made by wire transfer concurrent with the close. After assignment, SHM Ventura Isle will begin making the necessary monthly rental payment obligations to the District.

CLP is required to pay the District's out of pocket legal expenses incurred in connection with the processing of the assignment. As of February 29, 2016 these fees totaled \$34,805.89. Additional costs in March and April will be included in a demand to escrow prior to close.

#### **NEXT STEPS:**

Close on the Assignment of Lease is expected to occur within a week of the Commission's approval. Pursuant to Amendment No. 3 to the Ground Lease, SHM will begin preparing plans for the replacement of G, H, and I Docks to be submitted to the District for consideration as discussed above. Concurrently District staff will begin preparing a parking signage and striping plan for the Parking Area to be approved by SHM Ventura Isle.

#### **ATTACHMENTS:**

- Attachment 1 – Consent to Assignment of Lease and Leasehold Deed of Trust
- Attachment 2 – Amendment No. 3 to Ground Lease
- Attachment 3 – Guaranty of Lease
- Attachment 4 – Credit Agreement
- Attachment 5 – Leasehold Deed of Trust
- Attachment 6 – Security Agreement
- Attachment 7 – Pledge Agreement

**CONSENT TO ASSIGNMENT OF LEASE AND LEASEHOLD DEED OF TRUST**

(Ventura Isle Marina – Ventura, California)

THIS **CONSENT TO ASSIGNMENT OF LEASE AND LEASEHOLD DEED OF TRUST** (this “**Consent**”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and among **VENTURA PORT DISTRICT**, a California port district (“**Lessor**”), the lessor under the Lease defined and described below, **SHM VENTURA ISLE, LLC**, a Delaware limited liability company, as assignee (the “**Assignee**”), and **CLP VENTURA MARINA, LLC**, f/k/a CNL Income Ventura Marina, LLC, the current lessee under the Lease (“**Lessee**”). This Consent shall not take effect until the consummation of the assignment contemplated hereby, but will become automatically effective upon the occurrence of the Closing (defined below).

**RECITALS:**

WHEREAS, Lessor and Lessee are parties to that certain Ground Lease dated November 19, 2003 between Lessor and Ventura Isle Marina, L.P. (the “**Original Lease**”), as amended from time to time and more particularly described in Exhibit “A” attached hereto and made part hereof (collectively, as amended, the “**Lease**”), relating to the marina property known as “Ventura Isle Marina” and more particularly described in the Lease (the “**Marina**”); and

WHEREAS, Lessee has entered into an asset purchase agreement to convey and assign all of its right, title and interest in, to and under the Lease to Assignee and sell, transfer and convey certain of Lessee's personal property located at the Marina to Assignee; and

WHEREAS, pursuant to the terms of such asset purchase agreement, at Closing (as defined in Section 1(b) below), Lessee and Assignee will enter into an assignment and assumption agreement pursuant to which all of Lessee's right, title and interest in, to and under the Lease will be assigned to Assignee, (the transaction described in the preceding clause is hereinafter referred to as the “**Subject Transaction**”); and

WHEREAS, Lessee has requested Lessor's consent to the Subject Transaction; and

WHEREAS, Assignee has entered into, or intends to enter into, a Credit Agreement by and among Regions Bank, as Administrative Agent and Collateral Agent (together with its successors and assigns, in such capacities, the “**Administrative Agent**”), and the Lenders from time to time party thereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”);

WHEREAS, as security for the Obligations (as defined in the Leasehold Deed of Trust), Assignee intends to execute a first leasehold deed of trust for the benefit of the Administrative Agent upon Assignee's interest as tenant under the Lease (the “**Leasehold Deed of Trust**”), and Assignee has entered into, or intends to enter into, a Security Agreement as required by the terms of the Credit Agreement (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”); and

WHEREAS, Safe Harbor Marinas, LLC (the sole member of Assignee) has entered into, or intends to enter into, a Pledge Agreement as required by the terms of the Credit Agreement (as



the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Pledge Agreement**”).

NOW, THEREFORE, in consideration of the covenants herein and for other good and valuable consideration, the receipt and sufficiency of which Lessor hereby acknowledges, the parties hereby agree as follows:

1. Consent and Release of Guaranty.

(a) Lessor hereby consents to the Subject Transaction, and agrees that no terms or conditions of the Lease shall be altered, amended or changed as a result of such Subject Transaction unless as otherwise amended by that certain Amendment No. 3 to Ground Lease of even date herewith.

(b) Lessor hereby confirms that all conditions to the effective assignment of the Lease, other than the closing of the transaction giving rise to the assignment (the “**Closing**”), have been satisfied or waived.

(c) Lessor hereby terminates and releases that certain Guaranty of Lease dated March 12, 2010 delivered by CNL Income Partners, LP n/k/a CLP Partners, LP, as guarantor in favor of Lessor.

2. Estoppel Certificate. Lessor hereby certifies the following to Assignee, Administrative Agent and their respective successors and assigns:

(a) The Lease represents the entire agreement between Lessee and Lessor with respect to the Marina. The Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, written or oral.

(b) There is no security deposit under the Lease. The current monthly installment of minimum annual rental payable under the Lease is \$46,020.00, payable in advance. The minimum annual rental and percentage rental due under the Lease has been paid through the date of this Consent. No rent has been prepaid for more than one (1) month. Lessee has not been given any free rent, partial rent, rebates, rent abatements, or rent concessions of any kind, except as may be stated in the Lease. There are no unfunded allowances payable to Lessee under the Lease.

(c) Lessee has fully performed all of its obligations under the Lease and is not in default under any term or provision of the Lease, including, without limitation, the payment of rent and other sums payable by Lessee to Lessor thereunder, and no event has occurred which, with notice or the passage of time or both, would constitute a default in any of Lessee's obligations under the Lease.

(d) Lessor has no current right to terminate the Lease based on any acts or omissions of Lessee as of the date hereof.

## ATTACHMENT 1

(e) Lessor has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against Lessor's or Lessee's interest in the Lease or the Marina.

Notwithstanding subsections 2(b) and 2(d) above, Lessor reserves the right to review Lessee's books and records under and in accordance with Section 5.7 of the Original Lease relating to percentage rental for the periods prior to the assignment of the Lease to Assignee, and in the event that it is determined that Lessee has underpaid percentage rental (an "**Underpayment**"), to pursue its rights and remedies against Lessee; provided that in no event shall Assignee have any liability for such Underpayment, nor shall such Underpayment constitute a default of Assignee under the Lease. In the event that Lessor elects to review Lessee's books and records as aforesaid, such review shall be conducted and completed within one hundred twenty (120) calendar days after the Closing.

3. Agreement of Assignee. Assignee agrees and hereby confirms that the Assignment and any other documents delivered in connection with the Subject Transaction, including, without limitation, the Credit Agreement, the Leasehold Deed of Trust, the Security Agreement, and the Pledge Agreement, shall not alter, modify or amend the terms or conditions of the Lease and, accordingly, the Lease shall prevail as between the Lessor and Assignee in the event of any conflict between the Lease and any of the Assignment or other documents executed and delivered in connection with the Subject Transaction. Nothing herein contained shall alter, modify or amend any of the Assignment or other documents with respect to any of the other parties thereto.

4. Notices. Lessor shall provide Assignee with copies of all notices which may be required to be provided to Lessee pursuant to the terms and provisions of the Lease. In the event of a default by either Lessor or Lessee or any other party under the Lease, Lessor shall give prompt written notice to Assignee. All notices, requests and other communications to the parties as required in this Consent shall be in writing and shall be given to such party at its address set forth below or such other address as such party may hereafter specify for the purpose of notice in accordance with the terms of the Lease.

Lessor: Attn: General Manager  
Ventura Port District  
1603 Anchors Way Drive  
Ventura, California 93001

Assignee: SHM Ventura Isle, LLC  
11226 Indian Trail, Suite 200  
Dallas, Texas 75228  
Attn: Jo Wilsmann

and

SHM Ventura Isle, LLC  
c/o Safe Harbor Marinas, LLC

## ATTACHMENT 1

950 Tower Lane, Suite 800  
Foster City, CA 94404  
Attn: Ryan Barnes and Jon Contos

With a copy to: Duane Morris LLP  
1540 Broadway  
New York, NY 10036  
Attn: Chester P. Lee, Esq.

The addresses set forth above may be changed as to any party by such party delivering to the other parties at least thirty (30) calendar days written notice as to such change of address.

### 5. Leasehold Deed of Trust.

(a) Lessor hereby consents to the granting by Assignee of the Leasehold Deed of Trust in substantially the form attached hereto as Exhibit B. Except as set forth in Section 5(b)(i) below, Lessor hereby waives Section 13.1(a)(viii) of the Original Lease in connection with the granting by Assignee of such Leasehold Deed of Trust. Subject to the terms and conditions set forth in Section 13.4 of the Original Lease, Lessor acknowledges and agrees that the Administrative Agent's exercise of its remedies pursuant to the Leasehold Deed of Trust upon the occurrence of an uncured event of default thereunder shall not be a breach of Section 13.1(a)(ix) of the Original Lease.

(b) Notwithstanding anything to the contrary in the Leasehold Deed of Trust:

(i) the Leasehold Deed of Trust, or any interest therein, shall not be further mortgaged, pledged, encumbered, hypothecated or any security otherwise granted therein, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, delayed or conditioned;

(ii) except as otherwise set forth in this Consent, the terms and provisions of the Lease shall prevail, govern and control in any instance where an inconsistency or conflict exists between the terms and provisions of the Lease and the terms and provisions of the Credit Agreement, Leasehold Deed of Trust, the Security Agreement, and/or the Pledge Agreement;

(iii) any proceeds from fire or extended coverage insurance as a result of a fire or other casualty at the Premises (as defined in the Lease) shall first be used for the repair, rebuilding, restoration or reconstruction of improvements at the Premises, if required under the Lease, and only the remaining proceeds, if any, may then be used to repay any part of the Obligations secured by the Leasehold Deed of Trust;

(iv) should Administrative Agent or any successor-in-interest to it, succeed to the interests of Assignee in the Premises or under the Lease by any means or proceedings whatsoever, including a transfer of control of Assignee by any means, then such Administrative Agent shall be obligated to keep and

## ATTACHMENT 1

perform all of the covenants and conditions of the Lease required to be kept and performed by Assignee; and

(v) Administrative Agent, regardless of whether or not a request for notice shall have been recorded by Lessor, shall give Lessor written notice of any default by Assignee under the Leasehold Deed of Trust prior to Administrative Agent exercising its remedy to foreclose pursuant to the Leasehold Deed of Trust, which notice shall be given within twenty (20) calendar days after Administrative Agent learns of the default.

(c) Notwithstanding anything to the contrary in the Credit Agreement, the Leasehold Deed of Trust, the Security Agreement, and/or the Pledge Agreement, any future advances to Assignee of loan proceeds secured by the Leasehold Deed of Trust shall be used solely by Assignee for purposes of funding capital improvements to the Premises. Assignee shall give written notice to Lessor's General Manager of the amount of any such advance of funds at least five business days prior to taking the advance. Unless the General Manager gives Assignee written notice of the District's objection to the advance specifying the reason(s) for the objection prior to the expiration of the five day period, the District will be deemed to have approved the advance of funds proposed by the Assignee (it being understood, however, that the foregoing restriction only applies to advances of new funds requested by Assignee and not to (i) protective advances made by or on behalf of Administrative Agent or the Lenders party to the Credit Agreement, or (ii) the payment of enforcement costs, indemnification payments or other Obligations (as such term is defined in the Leasehold Deed of Trust) to the Administrative Agent or the Lenders party to the Credit Agreement).

(d) Lessor and Assignee hereby agree that the Lease shall not be modified, terminated (for any reason other than by exercise of Lessor's remedies as a result of an uncured default), amended, altered or cancelled, nor shall Lessor accept a surrender of the Marina by Assignee, without the prior written consent of Administrative Agent, and any such action taken without Administrative Agent's consent shall not be binding on Administrative Agent.

(e) All notices, demands, requests or other communications to be sent by Administrative Agent to Lessor and vice versa pursuant to this Consent or the Lease or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page hereof and, if addressed to Administrative Agent, to REGIONS BANK, 1717 McKinney Avenue, Suite 1100, Dallas, TX 75202, Attn: Dan Walker, Vice President, and if addressed to Lessor, at the address set forth in Section 4 above, or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as

## ATTACHMENT 1

required above. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

(f) Lessee acknowledges and agrees that Appreciation Rent is due with respect to the Subject Transaction upon Closing. Lessor acknowledges and agrees that no Appreciation Rent is due with respect to the Leasehold Deed of Trust, the Obligations or the financing transaction evidenced thereby as of the effective date of this Agreement.

6. Authority. No consent or approval of any third party is required in order for Lessor to deliver this Consent, and Lessor has all requisite power and authority to execute and deliver this Consent.

7. Captions. The captions herein are inserted only for convenience of reference and in no way define, limit or describe the scope of intent of this Consent or any particular paragraph or section herein.

8. Successors and Assigns. This Consent shall inure to the benefit of Assignee, Administrative Agent and their respective successors and assigns and shall be binding upon Lessor and its successors and assigns.

9. Counterparts. This Consent may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**[Signatures being on the following page]**

## ATTACHMENT 1

IN WITNESS WHEREOF, the undersigned Lessor has caused this Consent to be executed on its behalf by its duly authorized representative on the date first set forth hereinabove, to be effective upon the occurrence of the Closing.

### **LESSOR:**

**VENTURA PORT DISTRICT**, a California  
port district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

### **ASSIGNOR:**

**CLP VENTURA MARINA, LLC**, a  
Delaware limited liability company  
(f/k/a CNL Income Ventura Marina, LLC)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

### **ASSIGNEE:**

**SHM VENTURA ISLE, LLC**

By: Safe Harbor Marinas, LLC, its sole  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTACHMENT 1

IN WITNESS WHEREOF, the undersigned Lessor has caused this Consent to be executed on its behalf by its duly authorized representative on the date first set forth hereinabove, to be effective upon the occurrence of the Closing.

**LESSOR:**

**VENTURA PORT DISTRICT**, a California  
port district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNOR:**

**CLP VENTURA MARINA, LLC**, a  
Delaware limited liability company  
(f/k/a CNL Income Ventura Marina, LLC)

By:  \_\_\_\_\_  
Name: ERIN GRAY  
Title: VICE PRESIDENT

**ASSIGNEE:**

**SHM VENTURA ISLE, LLC**

By: Safe Harbor Marinas, LLC, its sole  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTACHMENT 1

IN WITNESS WHEREOF, the undersigned Lessor has caused this Consent to be executed on its behalf by its duly authorized representative on the date first set forth hereinabove, to be effective upon the occurrence of the Closing.

**LESSOR:**

**VENTURA PORT DISTRICT**, a California  
port district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNOR:**


**CLP VENTURA MARINA, LLC**, a  
Delaware limited liability company  
(f/k/a CNL Income Ventura Marina, LLC)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

**SHM VENTURA ISLE, LLC**

By: Safe Harbor Marinas, LLC, its sole  
member

By:   
Name: JONATHAN CONTOS  
Title: manager



## ATTACHMENT 1

### EXHIBIT A – Lease Documents

1. Ground Lease dated November 19, 2003, by and between Ventura Port District, as lessor, and Ventura Isle Marina, L.P., as lessee.
2. Amendment No. 1 to Ground Lease dated October 1, 2006, by and between Ventura Port District and Ventura Isle Marina, L.P., recorded November 15, 2007, as Instrument No.: 20071115-00210592-0 in the Official Records of Ventura County, California.
3. Amended and Restated Memorandum of Lease dated December 9, 2009, between Ventura Port District and Ventura Isle Marina, L.P., recorded January 15, 2010, as Instrument No.: 20100115-0000642-0 in the Official Records of Ventura County, California.
4. Amendment No. 2 to Ground Lease dated March 12, 2010, between Ventura Port District and Ventura Isle Marina, L.P.
5. Consent to Assignment of Lease and Estoppel Certificate dated March 12, 2010, among Ventura Port District, as lessor, CNL Income Partners, LP, as buyer, CNL Income Ventura Marina, LLC, as assignee, Ventura Isle Marina, L.P. as lessee, and VIM, L.P. as operator.
6. Assignment and Assumption of Lease Agreement dated March 12, 2010, between Ventura Isle Marina, L.P. and CNL Income Ventura Marina, LLC, recorded March 19, 2010, as Instrument No.: 20100319-00043239-0 in the Official Records of Ventura County, California.
7. Rent Adjustment Letter dated September 7, 2011 from Ventura Port District.
8. Amendment No. 3 to Ground Lease of even date herewith.

ATTACHMENT 1

**EXHIBIT B – Form of Leasehold Deed of Trust**

See Attached.

RECORDING REQUESTED BY AND WHEN  
RECORDED RETURN TO:

Moore & Van Allen PLLC  
100 North Tryon Street, Floor 47  
Charlotte, North Carolina 28202-4003  
Attn: Todd A. Caraway

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: \_\_\_\_\_

**ATTENTION: COUNTY RECORDER -- THIS DEED OF TRUST SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING UNDER SECTION 9502 OF THE CALIFORNIA UNIFORM COMMERCIAL CODE AND COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE LAND DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. ADDITIONALLY THIS DEED OF TRUST IS TO BE FILED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF THE GRANTOR, AS "DEBTOR", AND THE AGENT, AS "SECURED PARTY". THE GRANTOR IS A RECORD OWNER OF AN INTEREST IN THE LAND DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE GRANTOR (DEBTOR) AND THE AGENT (SECURED PARTY) ARE SET FORTH BELOW.**

STATE OF CALIFORNIA

1363 Spinnaker Drive, Ventura, California

COUNTY OF VENTURA

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT  
OF LEASES AND RENTS AND FIXTURE FILING**

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Deed of Trust") is made and entered into as of April \_\_, 2016, from SHM VENTURA ISLE, LLC, a Delaware limited liability company, with an address of c/o Safe Harbor Marinas, LLC, 11226 Indian Trail, Dallas, Texas 75229, Attn: Chief Financial Officer (the "Grantor"), as trustor, to FIRST AMERICAN TITLE INSURANCE CORPORATION, a Nebraska corporation (the "Trustee"), as trustee, whose mailing address is 800 Boylston Street, Suite 2820, Boston, Massachusetts 02199, for the benefit of REGIONS BANK, an Alabama state banking corporation ("Regions Bank"), in its capacity as Collateral Agent for the Lenders (as defined in the Credit Agreement (hereinafter defined)) and any other holder of the Obligations (as defined in the Credit

## ATTACHMENT 1

Agreement), with an address of 1717 McKinney Avenue, Suite 1100, Dallas, TX 75202, Attn: Dan Walker, Vice President (Regions Bank, in such capacity, together with any successors and permitted assigns, the "Agent"), as beneficiary.

### RECITALS:

WHEREAS, the Grantor, as the borrower, has entered into that certain Credit Agreement dated as of April [ ], 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement) among the Grantor, the Lenders from time to time party thereto and the Agent;

WHEREAS, the Grantor is the owner of the leasehold interest in the real property described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Grantor is required to execute and deliver this Deed of Trust pursuant to the Credit Agreement.

### W I T N E S S E T H:

The Grantor, in consideration of the indebtedness herein recited and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has irrevocably granted, released, sold, remised, bargained, assigned, pledged, warranted, mortgaged, transferred and conveyed, and does hereby grant, release, sell, remise, bargain, assign, pledge, warrant, mortgage, transfer and convey to Trustee and Trustee's successors and assigns, in trust, with power of sale, for the benefit of Agent, a continuing security interest in and to, and lien upon, all of the Grantor's right, title and interest in and to the following described land, real property interests, buildings, improvements, fixtures and other collateral:

(a) All leasehold estates, leasehold interests or rights in and to that certain real property situated in Ventura County, California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), under and in accordance with the lease agreement described on Exhibit B attached hereto and incorporated herein by this reference (the "Lease Agreement"), and all rights, benefits, privileges, and interests of Grantor in the Lease Agreement and all modifications, extensions, renewals, and replacements thereof, and all deposits, credits, options, privileges, and rights of Grantor as tenant under the Lease Agreement, together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Grantor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired; and

(b) All of Grantor's right, title and interest in and to buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements"), pursuant to the Lease Agreement or otherwise, and all materials intended for construction, reconstruction, alteration and repair of such Improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid Land, and all fixtures now or hereafter owned by the Grantor and located on or attached to and used in connection with the aforesaid Land and Improvements (collectively, the "Fixtures"), and all articles of personal property now or hereafter owned by the Grantor and attached to or contained in and used in connection with the aforesaid Land and Improvements (including, but not limited to, all furniture, furnishings,

## ATTACHMENT 1

apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment and fixtures and appurtenances thereto), and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Personalty") and all proceeds of the Tangible Personalty, and all appurtenances to the Land (the "Appurtenances") and all proceeds and products of the Land, including casualty and condemnation proceeds (collectively, the "Proceeds") (hereinafter, the Land, the Improvements, the Fixtures, the Tangible Personalty, the Appurtenances and the Proceeds may be collectively referred to as the "Premises").

TO HAVE AND HOLD the same, together with all privileges, hereditaments, easements and appurtenances thereunto belonging, subject to the Permitted Liens, to the Trustee and the Trustee's successors and assigns to secure the Indebtedness (hereinafter defined) and other obligations herein recited; provided that, should (a) the Indebtedness secured hereby be paid in full and should the Grantor discharge its obligations secured hereby and satisfy the obligations in full or (b) the conditions set forth in the Credit Agreement for the release of this Deed of Trust be fully satisfied, the lien and security interest of this Deed of Trust shall cease, terminate and be void and the Agent shall promptly cause a release of this Deed of Trust to be filed in the appropriate office; and until such obligations or conditions are fully satisfied, it shall remain in full force and effect.

And, as additional security for the Indebtedness, subject to the terms of the Lease Agreement, the Grantor hereby irrevocably assigns to the Agent all of Grantor's right, title and interest in and to any security deposits, rents, issues, profits and revenues of the Premises from time to time accruing (the "Rents and Profits") which assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Notwithstanding the foregoing, so long as no Event of Default shall exist, Grantor shall have a license (which license shall terminate automatically and without notice upon the occurrence and during the continuance of an Event of Default) to collect, but not more than thirty (30) days prior to accrual, all Rents and Profits. In the event, however, that Grantor shall cure any such Event of Default, then the license granted under this paragraph shall be reinstated unless and until another Event of Default occurs, at which time the license shall again terminate.

As additional collateral and further security for the Indebtedness, the Grantor does hereby assign to the Agent and grants to the Agent a security interest in all of the right, title and the interest of the Grantor in and to any and all insurance policies and proceeds thereof and any and all leases (including equipment leases), rental agreements, management contracts, franchise agreements, construction contracts, architects' contracts, technical services agreements, or other contracts, licenses and permits to the extent now or hereafter relating solely to the Premises (the "Intangible Personalty") or any part thereof, and the Grantor agrees to execute and deliver to the Agent such additional instruments, in form and substance reasonably satisfactory to the Agent, as may hereafter be reasonably requested by the Agent to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by the Agent to any lease, rental agreement, management contract, franchise agreement, construction contract, technical services agreement or other contract, license or permit, or to impose upon the Agent any obligation with respect thereto. Notwithstanding the foregoing provisions, such assignment and grant of security interest contained herein shall not extend to, and the Intangible Personalty shall not include, any personalty which is now or hereafter held by the Grantor as licensee, lessee or otherwise, to the extent that such personalty is not assignable or capable of being encumbered as a matter of law or under the terms of the license, lease or other agreement applicable thereto (but solely to the extent that any such restriction shall be enforceable under applicable law); provided, however, that the foregoing assignment and grant of security interest shall extend to, and the

## ATTACHMENT 1

Intangible Personalty shall include, any and all proceeds of such personalty to the extent that the assignment or encumbering of such proceeds is not so restricted under the terms of the license, lease or other agreement applicable thereto.

All the Tangible Personalty which comprises a part of the Premises shall, as far as permitted by law, be deemed to be affixed to the aforesaid Land and conveyed therewith. The Grantor hereby grants a security interest in (a) the balance of the Tangible Personalty, (b) the Fixtures, (c) the Rents and Profits and (d) the Intangible Personalty, and this Deed of Trust shall be considered to be a security agreement which creates a security interest in such items for the benefit of the Agent. In that regard, the Grantor grants to the Agent all of the rights and remedies of a secured party under the laws of the state in which the Premises are located.

The Grantor, the Trustee and the Agent covenant, represent and agree as follows:

### ARTICLE I

#### Indebtedness Secured

1.1 Indebtedness. The Agent and the Lenders have established Term Loan A in the amount of Six Million Six Hundred Fifty Thousand and No/100 Dollars (\$6,650,000.00) in favor of the Grantor pursuant to the terms of the Credit Agreement. This Deed of Trust is given to secure the payment and performance by the Grantor of (a) all Obligations and (b) all obligations and liabilities incurred in connection with the collection and enforcement of the Obligations (all of which whether now existing or hereafter arising, collectively, the "Indebtedness").

1.2 Future Advances. This Deed of Trust is given to secure the Indebtedness, together with any renewals or extensions or modifications thereof upon the same or different terms or at the same or different rate of interest and also to secure all future advances and readvances or other extensions of credit that may subsequently be made to the Grantor by the Lenders under, in connection with, or otherwise with respect to the Indebtedness. Notwithstanding the foregoing, the maximum principal amount of the Indebtedness secured hereunder shall not exceed \$11,900,000.00.

### ARTICLE II

#### Grantor's Covenants, Representations and Agreements

2.1 Title to Property. The Grantor represents and warrants to the Agent (a) that it is seized of a leasehold interest in the Land and the Improvements pursuant to the Lease Agreement and has the right to encumber and convey the same, and such leasehold interest in the Land and Improvements is free and clear of all liens and encumbrances except for Permitted Liens, (b) that it is the owner of the Tangible Personalty free and clear of all liens and encumbrances except for the Permitted Liens and (c) that it will warrant and defend the such leasehold interest in the Land and the Improvements against the claims of all Persons (except for Permitted Liens). As to the balance of the Premises, the Rents and Profits and the Intangible Personalty, the Grantor represents and warrants that it will defend such property against the claims of all Persons subject to the Permitted Liens.

2.2 Additional Documents. The Grantor agrees to execute and deliver to the Agent, concurrently with the execution of this Deed of Trust and upon the reasonable request of the Agent from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby. The Grantor hereby authorizes the Agent to prepare and file such financing statements, fixture filings, renewals thereof, amendments thereof, supplements thereto and

other instruments as the Agent may from time to time deem necessary or appropriate in order to perfect and maintain the security interests granted hereby in accordance with the Uniform Commercial Code as adopted and as in effect in the state in which the Land is located (the “UCC”).

2.3 Insurance Proceeds. Subject to the provisions of the Credit Agreement, the Grantor assigns to the Agent any proceeds which may become due by reason of any material loss, damage to or destruction of the Premises to which the Grantor is entitled, and such proceeds shall be applied as set forth in the Credit Agreement. Notwithstanding the foregoing, subject to the provisions of the Credit Agreement, provided no Event of Default has occurred and is continuing, the Grantor shall have the right to collect any insurance proceeds and to apply such proceeds to the restoration of the Premises. To the extent such proceeds are applied to the repayment of the balance due under the Credit Documents, if such proceeds exceed the balance due under the Indebtedness, any such excess shall be repaid to the Grantor.

2.4 Eminent Domain. Subject to the provisions of the Credit Agreement, the Grantor assigns to the Agent any proceeds or awards which may become due by reason of any condemnation or other taking for public use of the whole or any part of the Premises or any rights appurtenant thereto to which the Grantor is entitled, and such proceeds or awards shall be applied in the same manner the insurance proceeds are applied as set forth in the Credit Agreement. To the extent such proceeds are applied to the repayment of the balance due under the Credit Documents, if such proceeds exceed the balance due under the Indebtedness, any such excess shall be repaid to the Grantor. The Grantor agrees to execute such further assignments and agreements as may be reasonably required by the Agent to assure the effectiveness of this Section. In the event any Governmental Authority shall require or commence any proceedings for the demolition of any buildings or structures comprising a part of the Premises, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Premises, the Grantor shall promptly notify the Agent of such requirements or commencement of proceeding (for demolition, condemnation or other taking). Notwithstanding the foregoing, subject to the provisions of the Credit Agreement, provided no Event of Default has occurred and is continuing, the Grantor shall have the right to collect and retain any such proceeds or awards.

2.5 Releases and Waivers. The Grantor agrees that no release by the Agent of any portion of the Premises, the Rents and Profits or the Intangible Personalty, no subordination of lien, no forbearance on the part of the Agent to collect on any Loan, or any part thereof, no waiver of any right granted or remedy available to the Agent and no action taken or not taken by the Agent shall, except to the extent expressly released, in any way have the effect of releasing the Grantor from full responsibility to the Agent for the complete discharge of each and every of the Grantor’s obligations hereunder.

## 2.6 Security Agreement.

(a) This Deed of Trust is hereby made and declared to be a security agreement, encumbering each and every item of Fixtures, Tangible Personalty and Intangible Personalty. In furtherance thereof, in order to secure the payment of the Indebtedness, Grantor hereby grants to Agent a security interest in all of the Grantor’s right, title and interest in all Fixtures, Tangible Personalty and Intangible Personalty in compliance with the provisions of the UCC. The Grantor hereby authorizes the Agent to file financing statements in any jurisdiction and with any filing office that the Agent may determine, in its sole discretion, is necessary or advisable to perfect the security interests granted herein. Such financing statements may describe or indicate the collateral to the extent a security interest therein is granted hereby, including without limitation the description “All goods of the debtor that are or are to become fixtures located on the Land, whether now owned or hereafter acquired by Debtor and whether now or hereafter located on the Land” or words of similar import. To the extent permitted by applicable law, the remedies for any violation (beyond applicable notice and/or cure periods) of the covenants, terms and condition of the security agreement herein contained shall be (i) as prescribed herein, (ii) as prescribed by

general law or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified under the UCC, all at the Agent's sole election. The Grantor and the Agent agree that the filing of such financing statement(s) in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the Grantor and the Agent that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, to the extent permitted by law, regarded as part of the real estate irrespective of whether (A) any such item is physically attached to the improvements, (B) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (C) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (x) the proceeds of any fire or hazard insurance policy or (y) any award in eminent domain proceedings for a taking or for loss of value or (z) the Grantor's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Premises, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of the Grantor or the Agent as determined by this instrument or impugning the priority of the Agent's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of the Agent in the event any court shall at any time hold with respect to the foregoing (x) or (y) or (z), that notice of the Agent's priority of interest to be effective against a particular class of persons, must be filed in the UCC records, provided, if there is a conflict between the terms of this paragraph and the terms of the Credit Agreement, the Credit Agreement shall govern.

(b) The Grantor warrants that the name and address of the "Debtor" (which is the Grantor), are as set forth in the preamble to this Deed of Trust; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove. Grantor warrants that Grantor's exact legal name is correctly set forth in the preamble of this Deed of Trust.

## 2.7 Leasehold Interests.

The Grantor shall:

(a) Make all payments and otherwise perform in all material respects all obligations in respect of the Lease Agreement and keep the Lease Agreement in full force and effect and not allow the Lease Agreement to lapse or be terminated or any rights to renew the Lease Agreement to be forfeited or cancelled, notify the Agent of any written notice of default received by the Grantor with respect to the Lease Agreement and cooperate with the Agent in all respects to cure any such default, except, in any case, where the failure to do so would not be reasonably likely to have a Material Adverse Effect.

(b) Without limiting the foregoing, with respect to the Lease Agreement:

(i) pay when due the rent and other amounts due and payable thereunder (subject to applicable cure or grace periods);

(ii) timely perform (in all material respects) and observe all of the material terms, covenants and conditions required to be performed and observed by it as tenant thereunder (subject to applicable cure or grace periods);

(iii) do all things necessary to preserve and keep unimpaired the Lease Agreement and its material rights thereunder;



## ATTACHMENT 1

(iv) not waive, excuse or discharge any of the material obligations of the ground lessor or other obligor thereunder;

(v) diligently and continuously enforce the material obligations of the ground lessor or other obligor thereunder;

(vi) without duplication of clause (i) and (ii) above, not do, permit or suffer any act, event or omission beyond applicable notice and/or cure periods which would permit the applicable ground lessor to terminate or exercise any other material remedy with respect to the Lease Agreement;

(vii) cancel, terminate, surrender, or materially modify or amend any of the provisions of the Lease Agreement or agree to any termination, material amendment, or material modification thereof if the effect of such cancellation, termination, surrender, modification, amendment or agreement is to (A) materially shorten the term of the Lease Agreement, (B) materially increase the rent payable under the Lease Agreement, (C) materially increase the purchase price under any purchase option concerning the property included in and subject to the Lease Agreement, (D) materially modify the gross or net leasable area subject to the Lease Agreement, (E) materially transfer to the ground lessee any costs and/or expenses previously paid by the ground lessor under the Lease Agreement, (F) terminate (or grant the ground lessor additional rights to unilaterally terminate) the Lease Agreement, or (G) subordinate the rights of the Grantor under the Lease Agreement to any property manager or any other Person, in each case without the prior written consent of the Agent (which shall not be unreasonably withheld or delayed);

(viii) deliver to the Agent all written default and other material written notices received by it or sent by it under the Lease Agreement;

(ix) upon the Agent's reasonable written request, provide to Agent any information or materials relating to the Lease Agreement and evidencing Grantor's due observance and performance of its material obligations thereunder;

(x) not permit or consent to the subordination of the Lease Agreement to any mortgage or other leasehold interest of the premises related thereto;

(xi) execute and deliver (to the extent permitted to do so under the Lease Agreement), upon the reasonable written request of the Agent, any documents, instruments or agreements as may be required to permit the Agent to cure any default under the Lease Agreement;

(xii) provide to Agent written notice of its intention to exercise any option of renewal or extension rights with respect to the Lease Agreement at least thirty (30) days prior to the expiration of the time to exercise such right or option and duly exercise any renewal or extension option with respect to the Lease Agreement (either consistent with such notice or upon the direction of the Agent) if the failure to so renew or extend would result in the Lease Agreement having a term less than three years after the Revolving Commitment Termination Date; provided, that Grantor further hereby appoints the Agent its attorney-in-fact, coupled with an interest, to execute and deliver, for and in the name of such Person, all instruments, documents or agreements necessary to extend or renew the Lease Agreement;

## ATTACHMENT 1

(xiii) not treat, in connection with the bankruptcy or other insolvency proceedings of any ground lessor or other obligor, the Lease Agreement as terminated, cancelled or surrendered pursuant to the Bankruptcy Code without the Agent's prior written consent;

(xiv) in connection with the bankruptcy or other insolvency proceedings of any ground lessor or other obligor, ratify the legality, binding effect and enforceability of the Lease Agreement as against the Grantor within the applicable time period therefor in such proceedings, notwithstanding any rejection by such ground lessor or trustee, custodian or receiver related thereto;

(xv) provide to the Agent not less than thirty (30) days prior written notice of the date on which the Grantor shall apply to any court or other governmental authority for authority or permission to reject the Lease Agreement in the event that there shall be filed by or against Grantor any petition, action or proceeding under the Bankruptcy Code or any similar federal or state law; provided, that the Agent shall have the right, but not the obligation, to serve upon the Grantor within such thirty (30) day period a notice stating that (A) the Agent demands that Grantor assume and the assign the Lease Agreement to the Agent subject to and in accordance with the Bankruptcy Code and (B) the Agent covenants to cure or provide reasonably adequate assurance thereof with respect to all defaults susceptible of being cured by the Agent and of future performance under the Lease Agreement; provided, further, that if the Agent serves such notice upon the Grantor, Grantor shall not seek to reject the Lease Agreement and shall promptly comply with such demand;

(xvi) permit the Agent (at its option), during the continuance of any Event of Default, to (i) perform and comply with all obligations under the Lease Agreement; (ii) do and take such action as the Agent deems necessary or desirable to prevent or cure any default by Grantor under the Lease Agreement and (iii) enter in and upon the applicable premises related to the Lease Agreement to the extent and as often as the Agent deems necessary or desirable in order to prevent or cure any default under the Lease Agreement;

(xvii) during the continuance of an Event of Default, in the event of any arbitration, court or other adjudicative proceedings under or with respect to the Lease Agreement, permit the Agent (at its option) to exercise all right, title and interest of the Grantor in connection with such proceedings; provided, that (i) Grantor hereby irrevocably appoints the Agent as its attorney-in-fact (which appointment shall be deemed coupled with an interest) to exercise such right, interest and title and (ii) the Grantor shall bear all costs, fees and expenses related to such proceedings; provided, further, that Grantor hereby further agrees that the Agent shall have the right, but not the obligation, to proceed in respect of any claim, suit, action or proceeding relating to the rejection of the Lease Agreement referenced above by the relevant ground lessor or obligor as a result of bankruptcy or similar proceedings (including, without limitation, the right to file and prosecute all proofs of claims, complaints, notices and other documents in any such bankruptcy case or similar proceeding); and

(xviii) use commercially reasonable efforts to deliver to the Agent (and, if it has the ability pursuant to the Lease Agreement, cause the ground lessor under the Lease Agreement to deliver to the Agent) upon written request of the Agent (but, so long as no Event of Default has occurred and is continuing, not more than one (1) time in any twelve month period) an estoppel certificate from the ground lessor in relation to the Lease Agreement in (x) the form required by the Lease Agreement or (y) otherwise in form and substance acceptable to the Agent, in its reasonable discretion, and, in the case of clause (y), setting forth (A) the name of lessee and lessor under the Lease Agreement; (B) that the Lease Agreement is in full force and effect and has not

## ATTACHMENT 1

been modified except to the extent Agent has received notice of such modification; (C) that no rental and other payments due thereunder are delinquent as of the date of such estoppel; and (D) whether such Person knows of any actual or alleged defaults or events of default under the Lease Agreement as of the date of such estoppel;

provided, that (x) Grantor hereby agrees to execute and deliver to Agent, within ten (10) Business Days of any written request therefor, such documents, instruments, agreements, assignments or other conveyances reasonably requested by the Agent in connection with or in furtherance of any of the provisions set forth above or the rights granted to the Agent in connection therewith and (y) in each instance in this Section 2.7 where "Agent" is used, either the Administrative Agent or the Collateral Agent may act to exercise the rights and abilities provided in this Section 2.7.

### ARTICLE III

#### Events of Default

An Event of Default shall exist under the terms of this Deed of Trust upon the occurrence and during the continuance of an Event of Default under the terms of the Credit Agreement.

### ARTICLE IV

#### Foreclosure

4.1 Acceleration of Secured Indebtedness; Foreclosure. Upon the occurrence and during the continuance of an Event of Default, the Indebtedness, including all accrued interest, may be accelerated by the Agent in accordance with the terms of the Credit Agreement. Upon such acceleration, the Agent may do any of the following:

(a) Give such notice of Event of Default and of election to cause the Premises (together with the Rents and Profits, Intangible Property and all other property subject to this Deed of Trust) to be sold as may be required by law or as may be necessary to cause the Trustee to exercise the power of sale granted herein. The Trustee shall then record and give such notice of trustee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the property subject to this Deed of Trust at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by the Agent, or by the Grantor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. The Trustee, from time to time, may postpone or continue the sale of all or any portion of the property subject to this Deed of Trust by public declaration at the time and place last appointed for the sale. No other notice of the postponed sale shall be required except as required by applicable law. Upon any sale, the Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, express or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof. Any person, including the Grantor, the Trustee or the Agent, may purchase at the sale.

(b) Commence proceedings for foreclosure of this Deed of Trust in the manner provided by law for the foreclosure of a real property mortgage or deed of trust.

4.2 Proceeds of Sale. The proceeds of any foreclosure sale of the Premises, or any part thereof, will be distributed and applied in accordance with the terms and conditions of the Credit Agreement (subject to any applicable provisions of applicable law).

## ATTACHMENT 1

4.3 Trustee's Fees. If a foreclosure proceeding is commenced by the Trustee but terminated prior to its completion, the Trustee shall be entitled to a reasonable fee in accordance with applicable law.

### ARTICLE V

#### Additional Rights and Remedies of the Agent

5.1 Rights Upon an Event of Default. Upon the occurrence and during the continuance of an Event of Default, the Agent, immediately and without additional notice and without liability therefor to the Grantor, except for gross negligence, willful misconduct or unlawful conduct as determined by a court of competent jurisdiction by final and nonappealable judgment, may do or cause to be done any or all of the following to the extent permitted by applicable law: (a) exercise its right to collect the Rents and Profits; (b) enter into contracts for the completion, repair and maintenance of the Improvements thereon; (c) expend Loan funds and any rents, income and profits derived from the Premises for the payment of any taxes, insurance premiums, assessments and charges for completion, repair and maintenance of the Improvements, preservation of the lien of this Deed of Trust and satisfaction and fulfillment of any liabilities or obligations of the Grantor arising out of or in any way connected with the Premises whether or not such liabilities and obligations in any way affect, or may affect, the lien of this Deed of Trust; (d) take such steps to protect and enforce the specific performance of any covenant, condition or agreement in this Deed of Trust, the Credit Agreement or the other Credit Documents, or to aid the execution of any power herein granted; and (e) generally, supervise, manage, and contract with reference to the Premises as if the Agent were equitable owner of the Premises. Any amounts expended by the Agent pursuant to this Section 5.1, together with interest thereon at the Default Rate, shall be secured hereby. The Grantor also agrees that any of the foregoing rights and remedies of the Agent may be exercised at any time during the continuance of an Event of Default independently of the exercise of any other such rights and remedies, and the Agent may continue to exercise any or all such rights and remedies until the Event(s) of Default are cured, until foreclosure and the conveyance of the Premises to the high bidder or until the Credit Agreement is no longer in effect or the Indebtedness is otherwise satisfied or paid in full, whichever occurs first.

5.2 Appointment of Receiver. Upon the occurrence and during the continuance of an Event of Default, the Agent shall be entitled, to the extent permitted by law, without additional notice and without regard to the adequacy of any security for the Indebtedness secured hereby, whether the same shall then be occupied as a homestead or not, or the solvency of any party bound for its payment, to make application for the appointment of a receiver to take possession of and to operate the Premises, and to collect the rents, issues, profits, and income thereof, all expenses of which shall be added to the Indebtedness and secured hereby. The receiver shall have all the rights and powers provided for under the laws of the state in which the Premises are located, including without limitation, the power to execute leases, and the power to collect the rents, sales proceeds, issues, profits and proceeds of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Grantor, its successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, sales proceeds, issues, proceeds and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. All costs and expenses (including receiver's fees, reasonable attorneys' fees and costs incurred in connection with the appointment of a receiver) shall be secured by this Deed of Trust. Notwithstanding the appointment of any receiver, trustee or other custodian, the Agent shall be entitled to retain possession and control of any cash or other instruments at the time held by or payable or deliverable under the terms of this Deed of Trust to the Agent to the fullest extent permitted by law.

5.3 Waivers. No waiver of any Event of Default shall at any time thereafter be held to be a waiver of any rights of the Agent stated anywhere in this Deed of Trust, the Credit Agreement or any of

## ATTACHMENT 1

the other Credit Documents, nor shall any waiver of a prior Event of Default operate to waive any subsequent Event(s) of Default. All remedies provided in this Deed of Trust, the Credit Agreement or any of the other Credit Documents are cumulative and may, at the election of the Agent, be exercised alternatively, successively, or in any manner and are in addition to any other rights provided by law.

5.4 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, the Grantor or the Grantor's heirs, devisees, representatives, successors or assigns are occupying or using the Premises, or any part thereof, each and all immediately shall become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale, notwithstanding any language herein apparently to the contrary, shall have the sole option to demand possession immediately following the sale or to permit such occupants to remain as tenants at will. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the property (such as an action for forcible detainer) in any court having jurisdiction.

5.5 Marshalling. The Grantor hereby waives, in the event of foreclosure of this Deed of Trust or the enforcement by the Agent of any other rights and remedies hereunder, any right otherwise available in respect to marshalling of assets which secure any Loan and any other indebtedness secured hereby or to require the Agent to pursue its remedies against any other such assets.

5.6 Protection of Premises. If Grantor fails to perform the covenants and agreements contained in this Deed of Trust, the Credit Agreement or any of the other Credit Documents, and such failure continues beyond any applicable grace, notice and cure periods, except in the case of an emergency in which event the Agent may act immediately, then the Agent may take such actions, including, but not limited to, disbursements of such sums, as the Agent in its reasonable discretion deems necessary to protect the Agent's interest in the Premises.

## ARTICLE VI

### General Conditions

6.1 Substitution of Trustee. If, for any reason, the Agent shall elect to substitute for the Trustee herein named (or for any successor to said Trustee), the Agent shall have the right to appoint successor Trustee(s) by duly acknowledged written instruments, and each new Trustee immediately upon recordation of the instrument so appointing him shall become successor in title to the Premises for the uses and purposes of this Deed of Trust, with all the powers, duties and obligations conferred on the Trustee in the same manner and to the same effect as though he were named herein as the Trustee. If more than one Trustee has been appointed, each of such Trustees and each successor thereto shall be and hereby is empowered to act independently.

6.2 Terms. The singular used herein shall be deemed to include the plural; the masculine deemed to include the feminine and neuter; and the named parties deemed to include their heirs, successors and permitted assigns. The term "Agent" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

6.3 Notices. The method and effectiveness of delivery of all notices, requests and other communications which relate to this Deed of Trust shall be governed by the terms of the Credit Agreement.

## ATTACHMENT 1

6.4 Severability. If any provision of this Deed of Trust is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

6.5 Headings. The captions and headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Deed of Trust nor the intent of any provision hereof.

6.6 Conflicting Terms. In the event the terms and conditions of this Deed of Trust conflict with the terms and conditions of the Credit Agreement, the terms and conditions of the Credit Agreement shall control and supersede the provisions of this Deed of Trust with respect to such conflicts.

6.7 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the internal law of the state in which the Premises are located.

6.8 Application of the Foreclosure Law. If any provision in this Deed of Trust shall be inconsistent with any provision of the foreclosure laws of the state in which the Premises are located, the provisions of such laws shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with such laws.

### 6.9 WRITTEN AGREEMENT.

(a) THE RIGHTS AND OBLIGATIONS OF THE GRANTOR AND THE AGENT SHALL BE DETERMINED SOLELY FROM THIS WRITTEN DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS, AND ANY PRIOR ORAL OR WRITTEN AGREEMENTS BETWEEN THE AGENT AND THE GRANTOR CONCERNING THE SUBJECT MATTER HEREOF AND OF THE OTHER CREDIT DOCUMENTS ARE SUPERSEDED BY AND MERGED INTO THIS DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS.

(b) THIS DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS MAY NOT BE VARIED BY ANY ORAL AGREEMENTS OR DISCUSSIONS THAT OCCUR BEFORE, CONTEMPORANEOUSLY WITH, OR SUBSEQUENT TO THE EXECUTION OF THIS DEED OF TRUST OR THE OTHER CREDIT DOCUMENTS.

(c) THIS WRITTEN DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS REPRESENT THE FINAL AGREEMENTS BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

6.10 WAIVER OF JURY TRIAL. THE AGENT AND THE GRANTOR HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THE AGENT AND THE GRANTOR MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEED OF TRUST (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE AGENT AND THE GRANTOR (a) CERTIFY THAT NO REPRESENTATIVE, THE AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGE THAT THEY HAVE BEEN

## ATTACHMENT 1

INDUCED TO ENTER INTO THIS DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

6.11 Request for Notice. The Grantor requests a copy of any statutory notice of default and a copy of any statutory notice of sale hereunder be mailed to the Grantor at the address specified in the introductory paragraph on the first page of this Deed of Trust.

6.12 State Specific Provisions. In the event of any inconsistencies between this Section 6.12 and any of the other terms and provisions of this Deed of Trust, the terms and provisions of this Section 6.12 shall control and be binding.

With respect to the Premises which are located in the State of California, notwithstanding anything contained herein to the contrary:

(a) Foreclosure By Power of Sale. Should the Agent elect to foreclose by exercise of the power of sale herein contained, the Agent shall notify the Trustee and request that the Trustee commence such proceedings.

(i) Upon receipt of such notice from the Agent, the Trustee shall cause to be recorded, published and delivered to the Grantor such Notice of Default and Election to Sell as shall then be required by law and by this Deed of Trust. The Trustee shall, without demand on the Grantor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Premises at the time and place of sale fixed by the Trustee in said Notice of Sale, either as a whole, or in separate lots or parcels or items as the Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. The Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the Premises so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, the Grantor, the Trustee or the Agent, may purchase at such sale and the Grantor hereby covenants to warrant and defend the title of such purchaser or purchasers. In addition, the Agent may credit bid at any such sale an amount up to and including the full amount of the indebtedness under the Credit Documents and hereunder, including without limitation, accrued and unpaid interest, principal, charges, advances made hereunder and the Trustee's fees and expenses.

(ii) After deducting all costs, fees and expenses of the Trustee and of this Deed of Trust, including costs of evidence of title in connection with sale, the Trustee shall apply the proceeds of sale in accordance with the provisions of the Credit Agreement.

(iii) Subject to California Civil Code Section 2924(c) or any successor provision thereto, the Trustee may postpone sale of all or any portion of the Premises by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(b) Personal Property.

(i) Upon the occurrence of an Event of Default, the Agent may proceed in any sequence to exercise its rights hereunder with respect to all or any portion of the Premises and all or any

## ATTACHMENT 1

portion of the personalty in accordance with the provisions of Section 9604 of the California Commercial Code.

(ii) Should the Agent elect to cause any of the Premises which is subject to the California Commercial Code to be disposed of, it may dispose of any part thereof in any manner now or hereafter permitted by the California Uniform Commercial Code, or in accordance with any other remedy provided by applicable law. Any such disposition may be conducted by an employee or agent of the Agent or the Trustee. Any person, including both the Grantor and the Agent, shall be eligible to purchase any part or all of such personalty at such disposition. Any such disposition may be either public or private sale as the Agent may elect, subject to the provisions of applicable law. The Agent shall also have the rights and remedies of a secured party under the California Commercial Code, or otherwise available at law or in equity. In furtherance of the foregoing, it is agreed that the expenses of retaking, holding, preparing for sale, selling or the like shall be borne by the Grantor and shall include the Agent's and the Trustee's attorneys' fees and legal expenses. The Grantor, upon demand of the Agent, shall assemble such personalty and make it available to the Agent at the Premises, a place which is hereby deemed to be reasonably convenient to the Agent and the Grantor. The Agent shall give the Grantor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such personalty or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is sent to the Grantor, in the same manner as provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to the Grantor.

(iii) This Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to the provisions of Division 9 of the California Commercial Code, with respect to those portions of the Premises consisting of goods which are or are to become fixtures relating to the Premises. The Grantor grants to the Agent a security interest in all existing and future goods which are now or in the future become fixtures relating to the Premises and proceeds thereof. The Grantor covenants and agrees that the recording of this Deed of Trust in the real estate records of the county where the Premises are located shall also operate from the date of such filing as a fixture filing in accordance with Section 9501 of the California Commercial Code. Without the prior written consent of the Agent, the Grantor shall not create or suffer to be created pursuant to the California Commercial Code any other security interest in such items, including replacements and additions thereto, other than as permitted pursuant to the terms of the Credit Agreement.

(c) Environmental Defaults and Remedies. In the event that any portion of the Premises is determined to be "environmentally impaired" (as "environmentally impaired" is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as "affected parcel" is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting Agent's or the Trustee's rights and remedies under this Deed of Trust, Agent may elect to exercise its right under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected parcel or portion of the Premises; and (2) exercise (i) the rights and remedies of an unsecured creditor, including reduction of its claim against Grantor to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining Agent's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Grantor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Premises and Grantor knew or should have known of the activity by such lessee, occupant or user which caused or contributed to the release or threatened release. All costs and expenses, including, but not limited to, attorney's fees, incurred by Agent in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Premises is environmentally



## ATTACHMENT 1

impaired, plus interest thereon at the default rate of interest set forth in the Credit Agreement until paid, shall be added to the obligations secured by this Deed of Trust and shall be due and payable to Agent upon its demand made at any time following the conclusion of such action.

(d) Request for Notice. The Grantor requests a copy of any statutory notice of default and a copy of any statutory notice of sale hereunder be mailed to Grantor at the address specified in Section 6.3 of this Deed of Trust.

(e) Grantor's Waivers. The Grantor waives, to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Premises, and (ii) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created.

The Grantor does hereby, to the extent permitted by law: (a) waive notice of acceptance of the guaranty of the Grantor by the Agent and any and all notices and demands of every kind which may be required to be given by any statute, rule or law; (b) omitted; (c) waive any defense, right of set-off or other claim which the Grantor may have against the Agent; (d) waive any and all rights or benefits the Grantor may have under (i) Section 580a of the California Code of Civil Procedure purporting to limit the amount of any deficiency judgment which might be recoverable following the occurrence of a trustee's sale under a deed of trust and any right to a fair value hearing or any fair value limitation or other limitation on liability or a deficiency based upon the fair value of any collateral after a nonjudicial foreclosure of any deed of trust securing the Indebtedness (including without limitation this Deed of Trust), (ii) Section 580b of the California Code of Civil Procedure stating that no deficiency may be recovered on a real property purchase money obligation, (iii) Section 580d of the California Code of Civil Procedure stating that no deficiency may be recovered on a note secured by a deed of trust on real property in case such real property is sold under the power of sale contained in such deed of trust, (iv) Section 726 of the California Code of Civil Procedure stating that there may be but one form of action on an indebtedness secured by real property, (v) California Civil Code Sections 2810, 2819, 2839, 2845, 2849, 2850, 2899, and 3433, and (vi) any other anti-deficiency statute or other similar protections, if such sections, or any of them, have any application hereto or any application to the Grantor; (e) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, notice of acceptance, diligence in collection and any and all formalities which otherwise might be legally required to charge the Grantor with liability; and (f) waive any defense arising as a result of the Agent's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code and any defense based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. The Grantor acknowledges that no representations of any kind whatsoever have been made by the Agent. No modification or waiver of any of the provisions of the guaranty of the Grantor shall be binding upon the Agent except as expressly set forth in a writing duly signed and delivered by the Agent.

(f) Nonforeign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") and Section 18805 of the California Revenue and Taxation Code provide that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the Agent that the withholding of tax will not be required in the event of the disposition of the Premises pursuant to the terms of this Deed of Trust, the Grantor hereby certifies, under penalty of perjury, that:

(i) The Grantor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder; and

## ATTACHMENT 1

(ii) The Grantor's principal place of business is 1363 Spinnaker Drive, Ventura, California 93001.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

## ATTACHMENT 1

IN WITNESS WHEREOF, the Grantor has executed this Deed of Trust as of the above written date.

**GRANTOR:**

SHM VENTURA ISLE, LLC,  
a Delaware limited liability company

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALIFORNIA  
ALL PURPOSE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_, 2015, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis  
of satisfactory evidence to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he executed the same in his authorized capacity, and that by his  
signature on the instrument the person, or the entity upon behalf of which the person acted,  
executed the instrument.

**I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.**

WITNESS my hand and official seal.

Signature \_\_\_\_\_

\_\_\_\_\_

**ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could  
prevent fraudulent attachment of this certificate to another document.**

THIS CERTIFICATE **MUST** BE ATTACHED TO  
THE DOCUMENT DESCRIBED AT RIGHT.

Title of Document Type \_\_\_\_\_  
Number of Pages \_\_\_\_\_ Date of Document \_\_\_\_\_  
Signer(s) Other Than Named Above \_\_\_\_\_  
\_\_\_\_\_

# ATTACHMENT 1

## Exhibit A

[Legal Description to be Attached]

ATTACHMENT 1

**Exhibit B**

**[Lease Description]**

**[NOTE: NEED TO INCLUDE RECORDING INFORMATION FOR MEMO OF LEASE]**

**AMENDMENT NO. 3 TO GROUND LEASE**

This Amendment No. 3 to Ground Lease (this "Amendment") is entered into effective as of \_\_\_\_\_, 2016, by and between **VENTURA PORT DISTRICT**, a California port district ("Lessor"), and **SHM VENTURA ISLE, LLC**, a Delaware limited liability company ("Lessee").

**Recitals**

A. Lessor and Lessee (as successor-in-interest to CLP Ventura Marina, LLC, a Delaware limited liability company, f/k/a CNL Income Ventura Marina, LLC, successor-in-interest to Ventura Isle Marina, L.P., a California limited partnership) are parties to that certain Ground Lease dated November 19, 2003 (the "Original Ground Lease"), as amended by that certain Amendment No. 1 to Ground Lease dated October 1, 2006 and that certain Amendment No. 2 to Ground Lease dated March 12, 2010 (as amended, the "Lease"), pursuant to which Lessor leases to Lessee and Lessee leases from Lessor the marina property known as "Ventura Isle Marina" as more particularly described in the Lease.

B. Lessor and Lessee desire to amend the Lease in accordance with the terms and conditions set forth herein.

C. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Lease.

**Amendment**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and in consideration of the foregoing recitals and the promises, conditions and covenants set forth herein, Lessor and Lessee hereby agree as follows:

1. Term. Section 4 of the Lease (as previously amended) is hereby deleted in its entirety and replaced by the following:

"The term of this Lease shall expire on the earlier of (a) November 18, 2053, or (b) the sooner termination of this Lease in accordance with the terms of this Lease."

2. Dock Work. Section 7.1(a) of the Original Ground Lease (as previously amended) is hereby deleted in its entirety and replaced with the following:

"(a) Within thirty (30) days after the date of Amendment No. 3 to Ground Lease executed by Lessor and Lessee (the "Amendment"), Lessee shall engage a qualified engineer to conduct a review and inspection of Docks G, H, and I (the "Phase I Dock Inspection") and develop a plan (the "Phase I Dock Plan") for the replacement and potential reconfiguration of such docks (the "Phase I Dock Work"). The selection of such engineer shall be subject to Lessor's approval (not to be unreasonably withheld, conditioned or delayed). In the event that Lessor refuses to approve the engineer originally proposed by Lessee, Lessee shall be

afforded additional time to select and retain another qualified engineer that is reasonably approved by Lessor. Within three (3) months after the date on which Lessee has engaged an approved engineer to perform the Phase I Dock Inspection, Lessee shall submit such engineer's final Phase I Dock Plan to Lessor for its review and approval (such approval not to be unreasonably withheld, conditioned or delayed; provided, however, Lessor shall be authorized to require as a condition of its approval that any such Phase I Dock Plan comply with any then-existing resolution or policy adopted by the Ventura Port District Board of Port Commissioners establishing the minimum elevation for future guide piles placed in the waters of Ventura Harbor). Lessee shall complete the Phase I Dock Work within three (3) years after Lessor approves the final Phase I Dock Plan (subject to force majeure).

Within two (2) years after the date of the Amendment, Lessee shall engage a qualified engineer to conduct a review and inspection of Docks L and M (the "Phase II Dock Inspection") and develop a plan (the "Phase II Dock Plan") for the replacement and potential reconfiguration of such docks (the "Phase II Dock Work"). The selection of such engineer shall be subject to Lessor's approval (not to be unreasonably withheld, conditioned or delayed). In the event that Lessor refuses to approve the engineer originally proposed by Lessee, Lessee shall be afforded additional time to select and retain another qualified engineer that is reasonably approved by Lessor. Within three (3) months after the date on which Lessee has engaged an approved engineer to perform the Phase II Dock Inspection, Lessee shall submit such engineer's final Phase II Dock Plan to Lessor for its review and approval (such approval not to be unreasonably withheld, conditioned or delayed; provided, however, Lessor shall be authorized to require as a condition of its approval that any such Phase II Dock Plan comply with any then-existing resolution or policy adopted by the Ventura Port District Board of Port Commissioners establishing the minimum elevation for future guide piles placed in the waters of Ventura Harbor). Lessee shall complete the Phase II Dock Work within three (3) years after Lessor approves the final Phase II Dock Plan (subject to force majeure)."

Lessor shall reasonably cooperate with Lessee in its efforts to complete the Phase I Dock Work and the Phase II Dock Work. Notwithstanding anything to the contrary set forth in the Lease, Lessor acknowledges and agrees that Lessee shall not be deemed to be in default under the Lease (as amended) by reason of the existing condition of the docks at the Premises so long as Lessee remains in compliance with its obligations under Section 7.1(a) of the Lease, as amended.

### 3. Parking Area Reserved Rights.

a. Notwithstanding anything to the contrary set forth in the Lease, Lessor reserves the right, on behalf of itself, its employees, tenants (excluding Ventura West Marina and all other private marina tenants), subtenants and employees of subtenants (excluding Ventura West Marina and all other private marina subtenants and their respective employees), agents, visitors, guests, and invitees (collectively, the "Lessor Users"), to park passenger vehicles (i.e., automobiles no larger than full size passenger vehicles, sport utility vehicles or pick-up trucks)



on an exclusive basis 24-hours a day, seven days a week in the parking area depicted on Exhibit A attached hereto (the "Parking Area"), consisting of one hundred fifty (150) parking spaces. Lessor may also use the Parking Area to shuttle and transport Lessor Users between the Parking Area and other areas within Ventura Harbor (provided, however, that (1) the design, appearance and location of any pick-up/drop-off location for the shuttle service shall be subject to Lessee's prior reasonable approval, (2) only shuttle vans and small shuttle buses shall be permitted within the Parking Area (it being understood that commercial-size buses are expressly prohibited, and (3) parking and extended idling of shuttles shall be expressly prohibited. Lessor shall install appropriate signage and paint striping and other markings in the Parking Area in order to delineate the Parking Area from Lessee's other parking areas located on the Premises (it being understood that the design, appearance and location of any such signage and painting shall be subject to Lessee's prior reasonable approval). In addition, Lessor shall have the right, but not the obligation, at its sole cost and expense, to use marker, paint, and/or signage within the Parking Area to designate certain restricted, unrestricted, reserved or exclusive areas as determined in Lessor's absolute and sole discretion (it being understood, however, that the design, appearance and location of any such markings, painting, and/or signage shall be subject to Lessee's prior reasonable approval). The use of the Parking Area by Lessor and the Lessor Users shall be subject to the following covenants, conditions and restrictions:

i. For purposes hereof, the Lessor Users shall not include any private marina operator or its tenants or subtenants, but may include the tenants and subtenants in the public marina operated by Lessor, dba Ventura Harbor Village, for so long as such marina remains a publicly owned and operated marina.

ii. Lessor shall not cause or permit the Parking Area to be used to wash or wax motor vehicles or to perform any oil changes/lubrication work, mechanical work, repair or maintenance work, or painting of motor vehicles.

iii. The Parking Area may be used by Lessor and the Lessor Users for the parking of passenger vehicles and for the shuttle service described in Section 3(a) above, and for no other purpose whatsoever unless as otherwise provided in this Amendment. Without limiting the foregoing, Lessor shall not cause or permit the Parking Area to be used for boat storage or recreational vehicle (RV) or mobile home parking.

iv. Lessor shall not store or release, or allow to be stored or released, in or on the Parking Area any combustibles, toxins, biohazards, environmental hazards, and/or any material that is regulated or poses a health or safety threat to the Premises or its occupants, or will negatively impact the insurance rates for the Premises or any improvements thereon.

v. Lessor and the Lessor Users shall use the Parking Area in compliance with all applicable laws. Without limiting the foregoing, any use of the Parking Area which would cause the Premises to be in violation of applicable zoning requirements is hereby prohibited.

vi. Lessor shall promptly repair any damage caused to the Parking Area, the Premises or any improvements thereon caused by or arising from or in connection with the use of the Parking Area by Lessor or the Lessor Users. Lessor further agrees to remove any

## ATTACHMENT 2

rubbish, trash or other debris brought upon the Parking Area and any other portion of the Premises by Lessor or any of the Lessor Users. Commencing on the date hereof and continuing until the termination of Lessor's parking rights pursuant to Section 3(b) below, Lessor shall keep and maintain and, upon termination, surrender the Parking Area clean and free of debris and in substantially the same condition and state of repair existing as of the effective date of this Amendment, ordinary wear and tear excepted. Without limiting the foregoing, Lessor shall be responsible for repairing any potholes in the Parking Area and keeping the landscaping, signage, striping, and paint within the Parking Area in a well-maintained, clean and slightly condition.

vii. Subject to any restrictions set forth in the Lease, Lessee reserves the right to access portions of the Parking Area for purposes that are not inconsistent and do not interfere with the parking rights afforded to Lessor (including, by way of example, the installation, maintenance or repair of utility lines under the Parking Area). It is acknowledged and agreed that Lessee, its tenants, guests, employees, invitees and agents shall have the right to use the driveway or traffic lanes within the Parking Area for purposes of ingress and egress and normal traffic circulation. In the event that any access of the Parking Area by Lessee will result in the need to dig any trench or perform any other excavation or construction work within the Parking Area, Lessee shall first provide Lessor with at least twenty-four (24) hours' prior written notice to Lessor; provided, however, in the event of an emergency as determined in Lessee's reasonable discretion, Lessee shall not be required to provide such notice to Lessor prior to accessing portions of the Parking Area; provided, further, however, in the event Lessee is required to access portions of the Parking Area after making such a determination, within seven (7) days after the termination of the emergency situation or condition, Lessee shall (i) provide Lessor written notice describing the nature of the emergency situation or condition and specifying the basis for such determination, and (ii) promptly restore at its sole cost and expense the Parking Area to the condition existing immediately prior to the existence of such emergency.

viii. Lessor acknowledges that the use of the Parking Area by Lessor and the Lessor Users is at their sole risk and expense.

ix. Lessor acknowledges and agrees that it has inspected the Parking Area and accepts same in its "AS IS, WHERE IS" condition, without any warranties by Lessee of any kind or nature, express or implied, and without any obligation by Lessee to make any improvements to the Parking Area.

x. Lessor hereby indemnifies, defends and holds Lessee, its affiliates, and their respective officers, directors, members, shareholders, partners, agents and employees free and harmless from and against any and all claims, costs, losses, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) (each a "Claim" and collectively, the "Claims") arising out of or resulting from the use of the Parking Area by Lessor or the Lessor Users; provided, however, if such Claims arise from the negligence of the Lessee or any of Lessee's officers, directors, members, shareholders, partners, agents, employees, tenants, subtenants, visitors, guests, or invitees, then Lessor's obligation hereunder shall be allocated in accordance with comparative negligence principles under California law. Notwithstanding anything contained in the foregoing to the contrary, Lessor's indemnification obligations hereunder shall not extend to any alleged or actual violation of, or Claims of noncompliance with, the Americans with Disabilities Act of 1990 or any corresponding laws of

the State of California, with respect to any portion of the Premises other than the Parking Area, it being the intent of the parties that Lessee shall have the sole responsibility, at its sole cost and expense, for curing, correcting, repairing, remediating, and rectifying any such violations or Claims, and Lessee's indemnity obligations under Article 14 of the Lease shall extend to any and all Claims made against Lessor, its commissioners, officers, agents, and employees that the the Premises (other than the Parking Area) violates or does not comply with the Americans with Disabilities Act of 1990 and/or any corresponding laws of the State of California.

xi. Lessor shall, at its expense, maintain the following policies of insurance in connection with its rights herein: (i) Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence whether involving personal injury liability (or death resulting therefrom) or property damage liability with an aggregate limit of \$2,000,000 for any injury or damage occurring upon, in or about the Parking Area or any appurtenances thereto; and (ii) Automobile Liability (including owned, leased, hired and non-owned vehicles) with a Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per each accident. All such policies shall be obtained from responsible companies qualified to do business and in good standing in the State of California. Lessee shall be named as an additional insured on such policies. Lessor agrees to furnish Lessee with certificates upon Lessee's request. The insurance requirements set forth herein may be increased or adjusted from time to time, as reasonably required by Lessee.

xii. Lessee acknowledges, understands, and agrees that its obligation to pay all taxes, assessments or fees levied, assessed or charged upon Lessee or the Premises under Article 24 of the Lease shall extend to all taxes, assessments or fees levied upon the Parking Area (excluding any such taxes, assessments or fees levied upon any revenues earned by Lessor with respect to its use and operation of the Parking Area, if any), and Lessee further acknowledges, understands, and agrees that Lessor shall not be responsible for any such taxes, assessments or fees levied, assessed or charged upon the Parking Area.

b. Notwithstanding the foregoing, in the event that Lessee desires to develop or construct revenue generating improvements (e.g., hotels, commercial developments, mixed-use developments, retail or office buildings) or improvements intended to increase the value or revenue-generating potential of the balance of the Premises (e.g., clubhouse, swimming pool, or fitness center but not including, for example, restroom facilities, laundry facilities, or paid parking facilities) (the "Parking Area Development") and such Parking Area Development is to be located upon the Parking Area or requires the use of all or any portion of the Parking Area, Lessee shall give written notice thereof to Lessor (the "Parking Area Development Notice"). Provided that Lessee obtains all applicable approvals under the Lease (which includes Lessor's approval), and all permits and approvals required by applicable governmental authorities for the Parking Area Development (collectively, the "Parking Area Development Approvals"), then the rights of Lessor and the Lessor Users to use (i) the Parking Area in its entirety (in the event that the Parking Area Development is to be located upon or requires the use of fifty percent (50%) or more of the total square footage of the Parking Area) or (ii) the portion of the Parking Area affected thereby (in the event that the Parking Area Development is to be located upon or requires the use of less than fifty percent (50%) of the total square footage of the Parking Area), shall cease and terminate effective as of the date which is the later to occur of (A) one (1) year after Lessee delivers the Parking Area Development Notice and (B) the date on which Lessee has

## ATTACHMENT 2

obtained the Parking Area Development Approvals. In the event Lessor's rights to a portion of the Parking Area are terminated under subsection (ii) of this Section 3(b), Exhibit A shall be amended to reflect the new Parking Area as a result of such termination. Lessor shall have the right in its absolute and sole discretion to terminate its parking rights to the Parking Area at any time upon at least 30 days' prior written notice to Lessee.

4. Notices. Notwithstanding anything to the contrary set forth in the Lease, any notice or demand to Lessee shall be given to:

SHM Ventura Isle, LLC  
11226 Indian Trail, Suite 200  
Dallas, Texas 75228  
Attn: Jo Wilsmann

With a copy to:

SHM Ventura Isle, LLC  
c/o Safe Harbor Marinas, LLC  
950 Tower Lane, Suite 800  
Foster City, CA 94404  
Attn: Ryan Barnes and Jon Contos

With an additional copy to:

Duane Morris LLP  
1540 Broadway  
New York, NY 10036  
Attn: Chester P. Lee, Esq.

5. No Other Modifications. Except as modified by this Amendment, the Lease remains in full force and effect.

6. Miscellaneous. This Amendment shall bind, and shall insure to the benefit of, the successors and assigns of the parties. This Amendment may be executed in multiple counterparts, with the same force and effect as if the parties had executed on instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. This Amendment shall be governed by the laws of the State of California.

[Signatures Contained on Following Page]

## ATTACHMENT 2

IN WITNESS WHEREOF, Lessor and Lessee have caused this Amendment to be duly executed as of the date first written above.

LESSOR:

VENTURA PORT DISTRICT, a California port district

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Secretary

LESSEE:

SHM VENTURA ISLE, LLC, a Delaware limited liability company

By: Safe Harbor Marinas, LLC

By:  \_\_\_\_\_

Name: JONATHAN CONTOS

Title: Manager

GUARANTY OF LEASE

THIS GUARANTY OF LEASE ("Guaranty of Lease") is made by Safe Harbor Marinas, LLC, a Delaware limited liability company ("Guarantor") in favor of VENTURA PORT DISTRICT, a California port district ("District") in connection with that certain Lease dated November 19, 2003, which has been amended from time to time ("Lease"), by which District now leases to SHM Ventura Isle, LLC, a Delaware limited liability company ("Lessee"), as successor in interest to the original lessee, certain marina property known as "Ventura Isle Marina" as more particularly described in the Lease,

Guarantor unconditionally and irrevocably guarantees, as a primary obligor and not as a surety, and promises to perform and be liable for any and all obligations and liabilities of Lessee under the terms of the Lease.

Guarantor confirms and warrants that:

(a) Lessee is a Delaware limited liability company, formed under and currently existing in accordance and compliance with all the laws of the State of Delaware and is qualified to do business in the State of California;

(b) Guarantor is the sole member of Lessee and has direct knowledge of and is familiar with the business affairs, books and records of Lessee; and

(c) Guarantor has the ability to participate in, control and influence the decision-making process of Lessee.

Guarantor acknowledges that the District is relying upon Guarantor's covenants and warranties hereinabove set forth in approving an assignment of the Lease.

Guarantor agrees that, without the consent of, or notice to, Guarantor and without affecting any of the obligations of Guarantor under this Guaranty of Lease: (a) District may release, substitute, or add any guarantor of or party to the Lease; (b) District may exercise, not exercise, impair, modify, limit, destroy, or suspend any of District's rights or remedies under the Lease; (c) District or any other person acting on District's behalf may deal in any manner with Lessee, any guarantor, and party to the Lease, or any other person; and (d) District may permit all or any part of the Premises or of the rights or liabilities of Lessee under the Lease to be sublet, assigned, or assumed (provided, however, that Guarantor's liability hereunder shall not extend to the obligations and liabilities of any subsequent lessee in the event that the Lease is assigned by Lessee to a party which is not an affiliate of Guarantor).

After obtaining Guarantor's written consent, District and Lessee may amend, compromise, release, or otherwise alter any term, covenant, or condition of the Lease,

### ATTACHMENT 3

and Guarantor hereby guarantees the performance by Lessee of all the obligations of Lessee under the Lease as so amended, compromised, released, or altered.

Guarantor waives Guarantor's rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the Guarantor by reason of California Civil Code Sections 2787 to 2855, inclusive.

Guarantor also agrees as follows:

1. Each covenant, warranty, obligation and other statement of the Guarantor hereunder shall be the individual, sole and independent obligation of Guarantor, separate and apart from all other similar rights District has or may have to enforce such covenants, warranties and obligations against Lessee or other guarantors;

2. The written acknowledgment by Lessee, a final decision in an arbitration proceeding or a judgment of any court, that Lessee has defaulted in performance of any of the provisions of the Lease shall, in every respect, bind and be conclusive against Guarantor;

3. To pay all costs, expenses and reasonable attorneys' fees which District or its assigns and successors, may incur in enforcing this Guaranty of Lease (to the extent District is the prevailing party in connection therewith);

4. This Guaranty of Lease is to be an open Guaranty and is to continue in full force, notwithstanding the acceptance by District, or its assigns or successors, of any compromise offered by Lessee, or its assigns or successors, without obtaining the consent of Guarantor. Said acceptance by District, or its assigns or successors, shall not in any manner operate as a release of liability of Guarantor hereunder;

5. Neither the obligations of Guarantor to perform in accordance with the terms of this Guaranty of Lease, nor any remedy for the enforcement thereof, shall be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release, or limitation of the liability of Lessee, or its estate in bankruptcy, or any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the Bankruptcy Code or other statute, or from any decision in an arbitration proceeding or any court;

6. This Guaranty of Lease and the rights and obligations of the Guarantor shall be construed and enforced in accordance with the laws of the State of California;

7. District may institute suit in the courts of the County of Ventura, State of California, to recover under the terms of this Guaranty of Lease, and Guarantor hereby consents to and submits to the jurisdiction of the State of California and agrees that District shall be entitled to judgment in and enforcement by the courts of the State of California for the amount which Guarantor may be adjudged to pay to District and/or any

### ATTACHMENT 3

other relief granted to District against Guarantor, by any such court of the State of California, including interest, reasonable attorneys' fees, and reasonable costs;

8. Guarantor waives the right to a jury trial and agrees that any controversy, dispute or claim arising under the Lease or this Guaranty may be determined in accordance with Article 16.8 of the Lease, as it may be amended from time to time;

9. This Guaranty of Lease shall bind the assigns and successors of Guarantor and is and shall in every particular be available to District, its assigns and successors;

10. This Guaranty of Lease may be amended or modified only in a writing signed by District and Guarantor.

11. If any waiver or other provision of this Guaranty of Lease shall be held to be prohibited by or invalid under applicable public policy or law, such waiver or other provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such waiver or other provision or any remaining provisions of this Guaranty of Lease.

[Signature Page Follows]



ATTACHMENT 3

Executed this CA day of \_\_\_\_\_, 2016, at Foster City,

SAFE HARBOR MARINAS, LLC, a  
Delaware limited liability company

By: [Signature]

Its: Manager

“GUARANTOR”

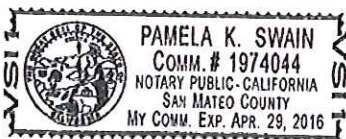
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California )  
 ) ss.  
COUNTY OF San Mateo )

On March 30, 2016, before me, Pamela K. Swain, a Notary Public, personally appeared Jonathan Castro, the Manager of Safe Harbor Marinas, LLC, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]  
Notary Public

CREDIT AGREEMENT

dated as of April [\_\_\_], 2016

among

SHM VENTURA ISLE, LLC,  
as Borrower,

THE LENDERS PARTY HERETO,

REGIONS BANK,  
as Administrative Agent and Collateral Agent,

and

LEGACYTEXAS BANK,  
as Syndication Agent

REGIONS CAPITAL MARKETS,  
a division of Regions Bank,  
and

LEGACYTEXAS BANK,  
as Joint Lead Arrangers and Joint Book Runners

---

# ATTACHMENT 4

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS AND INTERPRETATION .....	1
Section 1.1 Definitions .....	1
Section 1.2 Accounting Terms.....	28
Section 1.3 Rules of Interpretation .....	28
SECTION 2. LOANS.....	29
Section 2.1 Term Loan A.....	29
Section 2.2 [Intentionally Omitted] .....	30
Section 2.3 [Intentionally Omitted] .....	30
Section 2.4 Pro Rata Shares; Availability of Funds.....	30
Section 2.5 Evidence of Debt; Register; Lenders' Books and Records; Term Loan A Notes	32
Section 2.6 Scheduled Principal Payments.....	32
Section 2.7 Interest on Loans.....	32
Section 2.8 Conversion/Continuation .....	33
Section 2.9 Default Rate of Interest.....	34
Section 2.10 Fees .....	35
Section 2.11 Prepayments/Commitment Reductions.....	35
Section 2.12 Application of Prepayments.....	36
Section 2.13 General Provisions Regarding Payments .....	36
Section 2.14 Sharing of Payments by Lenders .....	38
Section 2.15 [Intentionally Omitted] .....	38
Section 2.16 Defaulting Lenders .....	38
Section 2.17 Removal or Replacement of Lenders.....	39
SECTION 3. YIELD PROTECTION .....	40
Section 3.1 Making or Maintaining LIBOR Loans .....	40
Section 3.2 Increased Costs .....	42
Section 3.3 Taxes.....	43
Section 3.4 Mitigation Obligations; Designation of a Different Lending Office .....	47
SECTION 4. [INTENTIONALLY OMITTED] .....	47
SECTION 5. CONDITIONS PRECEDENT.....	47
Section 5.1 Conditions Precedent to Initial Credit Extensions .....	47
Section 5.2 Conditions to Each Credit Extension.....	50
SECTION 6. REPRESENTATIONS AND WARRANTIES .....	51
Section 6.1 Organization; Requisite Power and Authority; Qualification.....	51
Section 6.2 Equity Interests and Ownership .....	51
Section 6.3 Due Authorization.....	51
Section 6.4 No Conflict .....	51
Section 6.5 Governmental Consents .....	52
Section 6.6 Binding Obligation .....	52
Section 6.7 Financial Statements .....	52
Section 6.8 No Material Adverse Effect; No Default .....	52
Section 6.9 Tax Matters .....	53
Section 6.10 Properties .....	53
Section 6.11 Environmental Matters .....	53

## ATTACHMENT 4

Section 6.12	No Defaults .....	54
Section 6.13	No Litigation or other Adverse Proceedings .....	54
Section 6.14	Information Regarding the Borrower .....	54
Section 6.15	Governmental Regulation .....	54
Section 6.16	Employee Matters .....	55
Section 6.17	Pension Plans .....	56
Section 6.18	Solvency .....	56
Section 6.19	Compliance with Laws .....	56
Section 6.20	Disclosure .....	56
Section 6.21	Insurance .....	57
Section 6.22	Security Agreement .....	57
Section 6.23	Mortgages .....	57
Section 6.24	Casualty .....	57
Section 6.25	[Intentionally Omitted] .....	57
Section 6.26	Management Agreements .....	57
<b>SECTION 7.</b>	<b>AFFIRMATIVE COVENANTS .....</b>	<b>57</b>
Section 7.1	Financial Statements and Other Reports .....	58
Section 7.2	Existence .....	60
Section 7.3	Payment of Taxes and Claims .....	60
Section 7.4	Maintenance of Properties .....	60
Section 7.5	Insurance .....	60
Section 7.6	Inspections .....	61
Section 7.7	Lenders Meetings .....	61
Section 7.8	Compliance with Laws and Material Contracts .....	61
Section 7.9	Use of Proceeds .....	61
Section 7.10	Environmental Matters .....	61
Section 7.11	Real Estate Assets .....	61
Section 7.12	Pledge of Personal Property Assets .....	64
Section 7.13	Books and Records .....	65
Section 7.14	[Intentionally Omitted] .....	65
Section 7.15	[Intentionally Omitted] .....	65
Section 7.16	[Intentionally Omitted] .....	65
Section 7.17	Appraisals .....	65
Section 7.18	Ground Leases .....	66
Section 7.19	Cash Management .....	69
Section 7.20	Post-Closing Matters .....	69
<b>SECTION 8.</b>	<b>NEGATIVE COVENANTS .....</b>	<b>69</b>
Section 8.1	Indebtedness .....	70
Section 8.2	Liens .....	70
Section 8.3	No Further Negative Pledges .....	71
Section 8.4	Restricted Payments .....	72
Section 8.5	Burdensome Agreements .....	72
Section 8.6	Investments .....	72
Section 8.7	Use of Proceeds .....	73
Section 8.8	Financial Covenants .....	73
Section 8.9	Capital Expenditures .....	73
Section 8.10	Fundamental Changes; Disposition of Assets; Acquisitions .....	74
Section 8.11	[Intentionally Omitted] .....	74
Section 8.12	Sales and Lease-Backs .....	74

## ATTACHMENT 4

Section 8.13	Transactions with Affiliates and Insiders .....	74
Section 8.14	Prepayment of Other Funded Debt .....	75
Section 8.15	Conduct of Business .....	75
Section 8.16	Fiscal Year; Accounting Practices .....	75
Section 8.17	Amendments to Organizational Agreements/Material Agreements .....	75
Section 8.18	Limitations on Borrower.....	75
Section 8.19	Equity Interests of Borrower.....	76
SECTION 9.	EVENTS OF DEFAULT; REMEDIES; APPLICATION OF FUNDS. ....	76
Section 9.1	Events of Default .....	76
Section 9.2	Remedies.....	77
Section 9.3	Application of Funds .....	78
Section 9.4	Borrower's Right to Cure .....	78
SECTION 10.	AGENCY .....	79
Section 10.1	Appointment and Authority .....	79
Section 10.2	Rights as a Lender.....	80
Section 10.3	Exculpatory Provisions .....	80
Section 10.4	Reliance by Administrative Agent.....	82
Section 10.5	Delegation of Duties .....	82
Section 10.6	Resignation of Administrative Agent .....	82
Section 10.7	Non-Reliance on Administrative Agent and Other Lenders .....	83
Section 10.8	No Other Duties, etc .....	83
Section 10.9	Administrative Agent May File Proofs of Claim.....	83
Section 10.10	Collateral Matters .....	84
SECTION 11.	MISCELLANEOUS .....	85
Section 11.1	Notices; Effectiveness; Electronic Communications .....	85
Section 11.2	Expenses; Indemnity; Damage Waiver.....	87
Section 11.3	Set-Off .....	88
Section 11.4	Amendments and Waivers .....	89
Section 11.5	Successors and Assigns .....	90
Section 11.6	Independence of Covenants .....	95
Section 11.7	Survival of Representations, Warranties and Agreements.....	95
Section 11.8	No Waiver; Remedies Cumulative .....	95
Section 11.9	Marshalling; Payments Set Aside.....	96
Section 11.10	Severability .....	96
Section 11.11	Obligations Several; Independent Nature of Lenders' Rights .....	96
Section 11.12	Headings .....	96
Section 11.13	Applicable Laws .....	96
Section 11.14	WAIVER OF JURY TRIAL.....	97
Section 11.15	Confidentiality .....	97
Section 11.16	Usury Savings Clause .....	98
Section 11.17	Counterparts; Integration; Effectiveness.....	99
Section 11.18	No Advisory of Fiduciary Relationship.....	99
Section 11.19	Electronic Execution of Assignments and Other Documents .....	99
Section 11.20	USA PATRIOT Act.....	100
Section 11.21	California Judicial Reference.....	100
Section 11.22	Acknowledgement and Consent to Bail-In of EEA Financial Institutions .....	100

## ATTACHMENT 4

### Appendices

Appendix A

Lenders, Term Loan A Commitments and Term Loan A Commitment

Percentages

Appendix B

Notice Information

### Schedules

Schedule 6.1

Organization; Requisite Power and Authority; Qualification

Schedule 6.2

Equity Interests and Ownership

Schedule 6.10(b)

Real Estate Assets

Schedule 6.14

Name, Jurisdiction and Tax Identification Numbers of Borrower

Schedule 6.21

Insurance Coverage

Schedule 6.26

Management Agreements

Schedule 7.20

Post-Closing Matters

Schedule 8.2

Existing Liens

Schedule 8.6

Existing Investments

### Exhibits

Exhibit 1.1

Form of Secured Party Designation Notice

Exhibit 2.1

Form of Funding Notice

Exhibit 2.5

Form of Term Loan A Note

Exhibit 2.8

Form of Conversion/Continuation Notice

Exhibit 3.3

Forms of U.S. Tax Compliance Certificates (Forms 1 – 4)

Exhibit 7.1(c)

Form of Compliance Certificate

Exhibit 11.5

Form of Assignment Agreement

## ATTACHMENT 4

### CREDIT AGREEMENT

This CREDIT AGREEMENT, dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, this “Agreement”), is entered into by and among SHM VENTURA ISLE, LLC, a Delaware limited liability company (the “Borrower”), the Lenders from time to time party hereto, and REGIONS BANK, as administrative agent (in such capacity, “Administrative Agent”) and collateral agent (in such capacity, “Collateral Agent”).

#### RECITALS:

WHEREAS, the Borrower has requested that the Lenders provide a term loan facility for the purposes set forth herein; and

WHEREAS, the Lenders have agreed to make the requested facilities available on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of these premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

#### **Section 1. DEFINITIONS AND INTERPRETATION**

Section 1.1 Definitions. The following terms used herein, including in the introductory paragraph, recitals, exhibits and schedules hereto, shall have the following meanings:

“Acquisition” means, with respect to any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of (a) all or any substantial portion of the property of another Person, or any division, line of business or other business unit of another Person or (b) at least a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise.

“Adjusted LIBOR Rate” means, for any Interest Rate Determination Date with respect to an Interest Period for an Adjusted LIBOR Rate Loan, the rate per annum obtained by dividing (a) (i) the rate per annum (rounded upward to the next whole multiple of one sixteenth of one percent (1/16 of 1%)) equal to the LIBOR or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (ii) in the event the rate referenced in the preceding clause (i) does not appear on such page or service or if such page or service shall cease to be available, the rate per annum (rounded upward to the next whole multiple of one sixteenth of one percent (1/16 of 1%)) equal to the rate determined by the Administrative Agent to be the offered rate on such other page or other service which displays an average settlement rate for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (iii) in the event the rates referenced in the preceding clauses (i) and (ii) are not available, the rate per annum (rounded upward to the next whole multiple of one sixteenth of one percent (1/16 of 1%)) equal to the quotation rate (or the arithmetic mean of rates) offered to first class banks in the London interbank market for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of

## ATTACHMENT 4

Regions Bank or any other Lender selected by the Administrative Agent, for which the Adjusted LIBOR Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (b) an amount equal to (i) one, minus (ii) the Applicable Reserve Requirement. Notwithstanding anything contained herein to the contrary, the Adjusted LIBOR Rate shall not be less than zero.

“Adjusted LIBOR Rate Loan” means Loans bearing interest based on the Adjusted LIBOR Rate.

“Administrative Agent” means as defined in the introductory paragraph hereto, together with its successors and assigns.

“Administrative Questionnaire” means an administrative questionnaire provided by the Lenders in a form supplied by the Administrative Agent.

“Adverse Proceeding” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any the Borrower) at law or in equity, or before or by any Governmental Authority, whether pending, threatened in writing against the Borrower or any material property of the Borrower.

“Affected Lender” means as defined in Section 3.1(b).

“Affected Loans” means as defined in Section 3.1(b).

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agent” means each of the Administrative Agent and the Collateral Agent.

“Agreement” means as defined in the introductory paragraph hereto.

“ALTA” means American Land Title Association.

“Anti-Corruption Laws” means the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq*, the UK Bribery Act of 2010 and all other laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption.

“Applicable Laws” means all applicable laws, including all applicable provisions of constitutions, statutes, rules, ordinances, regulations and orders of all Governmental Authorities and all orders, rulings, writs and decrees of all courts, tribunals and arbitrators.

“Applicable Margin” means (a) 3.00% per annum for Adjusted LIBOR Rate Loans and (b) 2.00% per annum for Base Rate Loans.

“Applicable Reserve Requirement” means, at any time, for any LIBOR Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against “Eurocurrency liabilities” (as such term is defined in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time) under regulations issued from time to time by the Board of Governors of the Federal Reserve System or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be



maintained by such member banks with respect to (a) any category of liabilities which includes deposits by reference to which the applicable Adjusted LIBOR Rate or LIBOR Index Rate or any other interest rate of a Loan is to be determined, or (b) any category of extensions of credit or other assets which include Adjusted LIBOR Rate Loans or Base Rate Loans determined by reference to the LIBOR Index Rate. Adjusted LIBOR Rate Loans and Base Rate Loans determined by reference to the LIBOR Index Rate shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefit of credit for pro ration, exception or offsets that may be available from time to time to the applicable Lender. The rate of interest on Adjusted LIBOR Rate Loans and Base Rate Loans determined by reference to the Index Rate shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

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

“Asset Sale” means a sale, lease, Sale and Leaseback Transaction, assignment, conveyance, exclusive license (as licensor), transfer or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of the Borrower’s businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, created, leased or licensed, other than (a) dispositions of surplus, obsolete or worn out property or property no longer used or useful in the business of the Borrower, whether now owned or hereafter acquired, in the ordinary course of business; (b) dispositions of inventory sold, and Intellectual Property licensed, in the ordinary course of business; (c) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (d) dispositions of Cash Equivalents in the ordinary course of business; (e) Involuntary Dispositions; and (f) licenses, sublicenses, lettings, leases or subleases (or similar arrangements) granted to any third parties in arm’s-length commercial transactions in the ordinary course of business that do not interfere in any material respect with the business of the Borrower.

“Assignment Agreement” means an assignment agreement entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.5(b)) and accepted by the Administrative Agent, in substantially the form of Exhibit 11.5 or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent.

“Attributable Principal Amount” means (a) in the case of Capital Leases, the amount of Capital Lease obligations determined in accordance with GAAP, (b) in the case of Synthetic Leases, an amount determined by capitalization of the remaining lease payments thereunder as if it were a Capital Lease determined in accordance with GAAP, (c) in the case of Securitization Transactions, the outstanding principal amount of such financing, after taking into account reserve amounts and making appropriate adjustments, determined by the Administrative Agent in its reasonable judgment and (d) in the case of Sale and Leaseback Transactions, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

“Authorized Officer” means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), chief financial officer or treasurer and, solely for purposes of making the certifications required under Section 5.1(b)(ii) and (iv), any secretary or assistant secretary.

## ATTACHMENT 4

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of one percent (0.5%) and (c) the LIBOR Index Rate in effect on such day plus one percent (1.0%). Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the LIBOR Index Rate shall be effective on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or the LIBOR Index Rate, respectively. Notwithstanding anything to the contrary herein, the Base Rate shall not be less than zero.

“Base Rate Loan” means a Loan bearing interest at a rate determined by reference to the Base Rate.

“Borrower” means as defined in the introductory paragraph hereto.

“Borrower Formation Date” means July 9, 2015, the date Borrower was formed as a limited liability company under the laws of the State of Delaware.

“Borrower LLC Agreement” means that certain Limited Liability Company Agreement of the Borrower dated as of July 9, 2015 by and among the Borrower and the members of the Borrower party thereto as in effect on the Closing Date.

“Borrowing” means a borrowing consisting of simultaneous Loans of the same Type of Loan and, in the case of Adjusted LIBOR Rate Loans, having the same Interest Period.

“Business Day” means (a) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close, and (b) with respect to all notices, determinations, fundings and payments in connection with the Adjusted LIBOR Rate and Adjusted LIBOR Rate Loans (and in the case of determinations, the Index Rate and Base Rate Loans based on the LIBOR Index Rate), the term “Business Day” means any day which is a Business Day described in clause (a) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

“Cash Equivalents” means, as of any date of determination, any of the following: (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date;

(b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (c) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (d) certificates of deposit or bankers' acceptances maturing within one (1) year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than \$500,000,000, and (iii) has the highest rating obtainable from either S&P or Moody's.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III and (iii) all requests, rules, guidelines or directives issued by a Governmental Authority in connection with a Lender's submission or re-submission of a capital plan under 12 C.F.R. § 225.8 or a Governmental Authority's assessment thereof shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which Safe Harbor Marinas cease to own and control, of record and beneficially, directly 100% (on a fully-diluted basis) of the aggregate issued and outstanding voting stock (or comparable voting interests) of the Borrower.

"Closing Date" means April [\_\_\_], 2016.

"Collateral" means the collateral identified in, and at any time covered by, the Collateral Documents.

"Collateral Agent" means as defined in the introductory paragraph hereto, together with its successors and assigns.

"Collateral Documents" means the Security Agreement, the Mortgages, the Pledge Agreement and all other instruments, documents and agreements delivered by the Borrower pursuant to this Agreement or any of the other Credit Documents in order to grant to the Collateral Agent, for the benefit of the holders of the Obligations, a Lien on any real, personal or mixed property of the Borrower as security for the Obligations.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

"Competitor" means any competitor of the Borrower that is in the same or a similar line of business as the Borrower designated in writing from time to time by the Borrower to the Administrative Agent and the Lenders (including by posting such notice to the Platform) not less than 2 Business Days

## ATTACHMENT 4

prior to such date; provided that “Competitor” shall exclude any Person that the Borrower has designated as no longer being a “Competitor” by written notice delivered to the Administrative Agent from time to time.

“Competitor List” has the meaning specified in Section 11.5(f).

“Compliance Certificate” means a Compliance Certificate substantially in the form of Exhibit 7.1(c).

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

“Consolidated Capital Expenditures” means, for any period, for the Borrower, all capital expenditures, as determined in accordance with GAAP; provided, however, that Consolidated Capital Expenditures shall not include (a) expenditures made with proceeds of any Involuntary Disposition to the extent such expenditures are used to purchase property that is the same as or similar to the property subject to such Involuntary Disposition or (b) expenditures made with the proceeds of any Asset Sale to the extent that such proceeds are actually reinvested in accordance with the terms of Section 2.11(c)(ii).

“Consolidated EBITDA” means, for any period, for the Borrower, an amount equal to Consolidated Net Income for such period plus the following to the extent deducted in calculating such Consolidated Net Income: (a) Consolidated Interest Charges for such period; (b) the provision for federal, state, local and foreign income taxes payable by the Borrower for such period; (c) depreciation and amortization expense for such period; (d) non-cash expenses that are non-recurring for such period; (e) non-cash impairment charges of goodwill, intangibles or other items for such period; (f) to the extent paid in cash, fees and expenses for such period related to the Acquisition of the Marina Property in an aggregate amount not to exceed the lesser of (i) \$500,000 or (ii) 5.00% of the consideration paid to acquire the Marina Property, in each case, as specifically identified in the applicable Compliance Certificate; (g) costs or expenses for such period that are covered by insurance proceeds, indemnification, or other reimbursement obligations to the extent that proceeds of such insurance, indemnification, or other reimbursement obligations have been received in cash by the Borrower; (h) fees and expenses for such period incurred on or prior to the Closing Date related to the negotiation, execution, and delivery of this Agreement; (i) fees and expenses for such period incurred after the Closing Date related to the negotiation, execution, and delivery of any amendment or modification of this Agreement in an amount not to exceed \$100,000 per Fiscal Year; (j) fees and expenses for such period related to issuances of Equity Interests or Investments permitted by Section 8.6; (k) costs of appraisals required under or in connection with this Agreement for such period; (l) to the extent covered by insurance (which coverage is actually received or confirmed in writing by the applicable insurance company), lost revenue with respect to business interruptions in such period and (m) non-cash equity compensation expenses for such period. Notwithstanding the foregoing, for purposes of calculating Consolidated EBITDA in connection with the calculation of the Consolidated Leverage Ratio required by Section 5.1(h) only, Consolidated EBITDA shall be \$1,142,700 for purposes of calculating the Consolidated Leverage Ratio after giving effect to the Credit Extensions on the Closing Date for the purchase of the Marina Property.

“Consolidated EBITDAR” means, for any period, Consolidated EBITDA of the Borrower plus, to the extent deducted in calculating Consolidated Net Income, Consolidated Rent Expense for such period.

“Consolidated Fixed Charges” means, for any period, for the Borrower, an amount equal to the sum of (a) Consolidated Interest Charges for such period paid in cash plus (b) Consolidated Scheduled Funded Debt Payments for such period plus (c) Consolidated Rent Expense for such period, all as determined in accordance with GAAP.

## ATTACHMENT 4

“Consolidated Funded Debt” means Funded Debt of the Borrower on a consolidated basis determined in accordance with GAAP.

“Consolidated Interest Charges” means, for any period, for the Borrower, an amount equal to the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, plus (b) the portion of rent expense with respect to such period under Capital Leases that is treated as interest in accordance with GAAP plus (c) the implied interest component of Synthetic Leases with respect to such period.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Funded Debt as of such date to (b) Consolidated EBITDA for the period of the four Fiscal Quarters most recently ended.

“Consolidated Maintenance Capital Expenditures” means, for any period, the aggregate amount of Consolidated Capital Expenditures expended by the Borrower during such period for the maintenance of its capital assets.

“Consolidated Net Income” means, for any period, for the Borrower, the net income of the Borrower (excluding extraordinary gains) for such period, as determined in accordance with GAAP.

“Consolidated Post-Distribution Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDAR minus Consolidated Taxes minus the amount of Restricted Payments made in cash made by the Borrower during such period minus the greater of (i) Consolidated Maintenance Capital Expenditures (other than Specified Capital Expenditures) or (ii) 3.00% of total revenue of the Borrower, in each case, for the period of the four Fiscal Quarters most recently ended to (b) Consolidated Fixed Charges for the period of the four Fiscal Quarters most recently ended; provided, however, that if fewer than four (4) Fiscal Quarters have elapsed since the Closing Date, then the relevant measurement period shall begin on the Closing Date.

“Consolidated Pre-Distribution Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDAR minus Consolidated Taxes minus the greater of (i) Consolidated Maintenance Capital Expenditures (other than Specified Capital Expenditures) or (ii) 3.00% of total revenue of the Borrower, in each case, for the period of the four Fiscal Quarters most recently ended to (b) Consolidated Fixed Charges for the period of the four Fiscal Quarters most recently ended; provided, however, that if fewer than four (4) Fiscal Quarters have elapsed since the Closing Date, then the relevant measurement period shall begin on the Closing Date.

“Consolidated Rent Expense” means, for any period, for the Borrower on a consolidated basis, the aggregate amount of rent or lease expense paid in cash during such period, as determined in accordance with GAAP.

“Consolidated Scheduled Funded Debt Payments” means for any period for the Borrower, the sum of all scheduled payments of principal on Consolidated Funded Debt, as determined in accordance with GAAP. For purposes of this definition, “scheduled payments of principal” (a) shall be determined without giving effect to any reduction of such scheduled payments resulting from the application of any voluntary or mandatory prepayments made during the applicable period, (b) shall be deemed to include the Attributable Principal Amount in respect of Capital Leases, Securitization Transactions and Synthetic Leases and (c) shall not include any voluntary prepayments or mandatory prepayments required pursuant to Section 2.11.

## ATTACHMENT 4

“Consolidated Taxes” means, for any period, for the Borrower, the aggregate of amount all income taxes, as determined in accordance with GAAP.

“Contractual Obligation” means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

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

“Conversion/Continuation Date” means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

“Conversion/Continuation Notice” means a Conversion/Continuation Notice substantially in the form of Exhibit 2.8.

“Credit Date” means the date of a Credit Extension.

“Credit Document” means any of this Agreement, each Term Loan A Note, the Collateral Documents, the Fee Letter, and, to the extent evidencing or securing the Obligations, all other documents, instruments or agreements executed and delivered by the Borrower for the benefit of any Agent or any Lender in connection herewith or therewith (but specifically excluding any Secured Swap Agreements and Secured Treasury Management Agreements).

“Credit Extension” means the making of a Loan.

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

“Debt Transaction” means, with respect to the Borrower, any sale, issuance, placement, assumption or guaranty of Funded Debt, whether or not evidenced by a promissory note or other written evidence of Indebtedness, except for Funded Debt permitted to be incurred pursuant to Section 8.1.

“Default” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“Default Rate” means an interest rate equal to (a) with respect to Obligations other than Adjusted LIBOR Rate Loans (including Base Rate Loans referencing the LIBOR Index Rate), the Base Rate plus the Applicable Margin, if any, applicable to such Loans plus two percent (2%) per annum and (b) with respect to Adjusted LIBOR Rate Loans (including Base Rate Loans referencing the LIBOR Index Rate), the Adjusted LIBOR Rate plus the Applicable Margin, if any, applicable to Adjusted LIBOR Rate Loans plus two percent (2%) per annum.

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding

## ATTACHMENT 4

(each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) upon delivery of written notice of such determination to the Borrower and each Lender.

"Disqualified Equity Interest" means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Term Loan A Commitments), (b) is redeemable at the option of the holder thereof (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Term Loan A Commitments), in whole or in part, (c) provides for the scheduled payment of dividends in cash unless such payments are (in the documentation evidencing such Equity Interests) expressly subject to the Borrower's compliance with this Agreement or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interest that would constitute Disqualified Equity Interest, in each case for clauses (a) through (d) above, prior to the date that is ninety-one (91) days after the latest maturity date in effect for Loans hereunder at the time of issuance of such Equity Interest.

"Dollars" and the sign "\$" mean the lawful money of the United States.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of

## ATTACHMENT 4

an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.5(b), subject to any consents and representations, if any as may be required therein. For the avoidance of doubt, any Competitor is subject to Section 11.5(f).

“Environmental Claim” means any known investigation, written notice, notice of violation, written claim, action, suit, proceeding, written demand, abatement order or other written order or directive (conditional or otherwise), by any Person arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to (x) human health or safety (arising from exposure to any Hazardous Materials) or (y) natural resources or the environment.

“Environmental Laws” means any and all current or future federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other written legally enforceable requirements of Governmental Authorities relating to (a) any Hazardous Materials Activity; (b) the generation, use, storage, transportation or disposal of Hazardous Materials; or (c) protection of human health and the environment from pollution, in any manner applicable to the Borrower or its Facilities.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which Borrower assumed liability with respect to any of the foregoing.

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

“Equity Investors” means the Sponsor and certain other holders of Equity Interests in Safe Harbor Marinas.



## ATTACHMENT 4

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended to the date hereof and from time to time hereafter, any successor statute, and the regulations thereunder.

“ERISA Affiliate” means, as applied to any Person, (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (c) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member.

“ERISA Event” means (a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which notice to the PBGC has been waived by regulation); (b) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code), the failure to make by its due date any minimum required contribution or any required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make by its due date any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal from any Pension Plan with two (2) or more contributing sponsors or the termination of any such Pension Plan, in either case resulting in material liability pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition reasonably likely to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA, to the extent that such imposition will likely result in a Material Adverse Effect; (g) to the extent that such events are likely to result in a Material Adverse Effect, the withdrawal of the Borrower or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan, or the receipt by the Borrower or any of its ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it is in “critical” or “endangered” status within the meaning of Section 103(f)(2)(G) of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (h) the imposition of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Pension Plan, to the extent that such imposition is likely to result in a Material Adverse Effect; (i) the assertion of a material claim (other than routine claims for benefits and funding obligations in the ordinary course) against any Pension Plan other than a Multiemployer Plan or the assets thereof, or against any Person in connection with any Pension Plan such Person sponsors or maintains, to the extent that such assertion is likely to result in a Material Adverse Effect; (j) receipt from the Internal Revenue Service of a final written determination of the failure of any Pension Plan intended to be qualified under Section 401(a) of the Internal Revenue Code to qualify under Section 401(a) of the Internal Revenue Code, or the receipt from the Internal Revenue Service of a written determination of the failure of any trust forming part of any such plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (k) the imposition of a lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) or 4068 of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

## ATTACHMENT 4

“Event of Default” means each of the conditions or events set forth in Section 9.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

“Excluded Accounts” means (a) deposit and/or securities accounts the balance of which consists exclusively of (i) withheld income taxes and federal, state or local employment taxes in such amounts as are required in the reasonable judgment of the Borrower to be paid to the IRS or state or local government agencies within the following two months with respect to employees of the Borrower or (ii) amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of the Borrower, (b) all segregated deposit and/or securities accounts established as and constituting (and the balance of which consists solely of funds set aside in connection with) taxes accounts, payroll accounts and trust accounts, and (c) any deposit and/or securities account maintained in a jurisdiction outside of the United States.

“Excluded Property” means, with respect to the Borrower, (a) any disbursement deposit account the funds in which are used solely for the payment of salaries and wages, employee benefits, workers’ compensation and similar expenses, (b) any leased Real Estate Asset (other than the Marina Property) with annual rent less than \$50,000, (c) any personal property (including, without limitation, motor vehicles) in respect of which perfection of a Lien is not (i) governed by the UCC, (ii) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office or (iii) effected by retention of certificate of title to vehicles or trailers and/or appropriate evidence of the Lien being filed with the applicable jurisdiction’s department of motor vehicles or other Governmental Authority, unless reasonably requested by the Administrative Agent or the Required Lenders, (d) any property which, subject to the terms of Section 8.3, is subject to a Lien of the type described in Section 8.2(m) pursuant to documents which prohibit the Borrower from granting any other Liens in such property, (e) any property to the extent that the grant of a security interest therein would violate Applicable Laws, require a consent not obtained of any Governmental Authority, or constitute a breach of or default under, or result in the termination of or require a consent not obtained under, any contract, lease, license or other agreement evidencing or giving rise to such property, or result in the invalidation thereof or provide any party thereto with a right of termination (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the applicable UCC or any other Applicable Law or principles of equity), (f) any certificates, licenses and other authorizations issued by any Governmental Authority to the extent that Applicable Laws prohibit the granting of a security interest therein, (g) Excluded Accounts and (h) proceeds and products of any and all of the foregoing excluded property described in clauses (a) through (g) above only to the extent such proceeds and products would constitute property or assets of the type described in clauses (a) through (g) above; provided, however, that the security interest granted to the Collateral Agent under the Security Agreement or any other Credit Document shall attach immediately to any asset of the Obligor (as defined in the Security Agreement) at such time as such asset ceases to meet any of the criteria for “Excluded Property” described in any of the foregoing clauses (a) through (h) above.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such Recipient is organized, in which it has its principal office or, in the case of any Lender, in which its applicable lending office is located or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Term Loan A Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Term Loan A Commitment (other than

## ATTACHMENT 4

pursuant to an assignment request by the Borrower under Section 2.17 or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.3, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.3(f) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Facility" means any real property including all buildings, fixtures or other improvements located on such real property now, hereafter or heretofore owned, leased, operated or used by the Borrower or any of its predecessors.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

"Federal Funds Effective Rate" means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher one one-hundredth of one percent (1/100 of 1%)) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (a) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to Regions Bank or any other Lender selected by the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

"Fee Letter" means that certain letter agreement dated as of the Closing Date among the Borrower, Regions Bank, Regions Capital Markets, a division of Regions Bank and LegacyTexas Bank.

"Financial Officer Certification" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of the Borrower that such financial statements fairly present, in all material respects, the financial condition of the Borrower as at the dates indicated and the results of its operations and its cash flows for the periods indicated, subject to changes resulting from normal year-end adjustments.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means the fiscal year of the Borrower ending on December 31 of each calendar year.

"Flood Hazard Property" means any Real Estate Asset subject to a Mortgage if any building (as defined in the National Flood Insurance Act or any other Applicable Laws promulgated pursuant thereto or in connection therewith) or portion thereof located on or comprising such Real Estate Asset is located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"Foreign Lender" means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

## ATTACHMENT 4

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

“Funded Debt” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations for borrowed money, whether current or long-term (including the Obligations hereunder), all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than sixty (60) days after the date on which such trade account payable was created), recognized as a liability on the balance sheet of the Borrower in accordance with GAAP;
- (c) all obligations under letters of credit (including standby and commercial), bankers’ acceptances and similar instruments (including bank guaranties);
- (d) the Attributable Principal Amount of Capital Leases, Synthetic Leases and Securitization Transactions;
- (e) all Disqualified Equity Interests;
- (f) all Funded Debt of others secured by (or for which the holder of such Funded Debt has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;
- (g) all Guarantees in respect of Funded Debt of another Person; and
- (h) Funded Debt of any partnership or joint venture or other similar entity in which such Person is a general partner or joint venturer, and, as such, has personal liability for such obligations, but only to the extent there is recourse to such Person for payment thereof.

For purposes hereof, the amount of Funded Debt shall be determined (x) based on the outstanding principal amount in the case of borrowed money indebtedness under clause (a) and purchase money indebtedness and the deferred purchase obligations under clause (b), (y) based on the maximum amount available to be drawn in the case of letter of credit obligations and the other obligations under clause (c), and (z) based on the amount of Funded Debt that is the subject of the Guarantees in the case of Guarantees under clause (g).

“Funding Notice” means a notice substantially in the form of Exhibit 2.1.

“GAAP” means, subject to the limitations on the application thereof set forth in Section 1.2, accounting principles generally accepted in the United States in effect as of the date of determination thereof.

“Governmental Acts” means any act or omission, whether rightful or wrongful, of any present or future *de jure* or *de facto* government or Governmental Authority.

## ATTACHMENT 4

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

“Governmental Authorization” means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

“Ground Lease” means, at any time, a ground lease under which the Borrower is the lessee.

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Hazardous Materials” means any hazardous substances defined by the Comprehensive Environmental Response Compensation and Liability Act, 42 USCA 9601, et. seq., as amended (“CERCLA”), including any hazardous waste as defined under 40 C.F.R. Parts 260-270, gasoline or petroleum (including crude oil or any fraction thereof), asbestos or polychlorinated biphenyls.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

“Highest Lawful Rate” means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under Applicable Laws relating to any Lender which are currently in effect or, to the extent allowed under such Applicable Laws, which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than Applicable Laws now allow.

## ATTACHMENT 4

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all Funded Debt;
- (b) net obligations under any Swap Agreement;
- (c) all Guarantees in respect of Indebtedness of another Person; and
- (d) all Indebtedness of the types referred to in clauses (a) through (c) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower.

For purposes hereof, the amount of Indebtedness shall be determined based on Swap Termination Value in the case of net obligations under any Swap Agreement under clause (b).

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

“Indemnatee” means as defined in Section 11.2(b).

“Index Rate” means, for any Index Rate Determination Date with respect to any Base Rate Loans determined by reference to the Index Rate, the rate per annum (rounded upward to the next whole multiple of one sixteenth of one percent (1/16 of 1%)) equal to (a) the LIBOR or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) for deposits with a term equivalent to one (1) month in Dollars, determined as of approximately 11:00 a.m. (London, England time) two (2) Business Days prior to such Index Rate Determination Date, or (b) in the event the rate referenced in the preceding clause (a) does not appear on such page or service or if such page or service shall cease to be available, the rate per annum (rounded upward to the next whole multiple of one sixteenth of one percent (1/16 of 1%)) equal to the rate determined by the Administrative Agent to be the offered rate on such other page or other service which displays an average settlement rate for deposits with a term equivalent to one (1) month in Dollars, determined as of approximately 11:00 a.m. (London, England time) two (2) Business Days prior to such Index Rate Determination Date, or (c) in the event the rates referenced in the preceding clauses (a) and (b) are not available, the rate per annum (rounded upward to the next whole multiple of one sixteenth of one percent (1/16 of 1%)) equal to the quotation rate (or the arithmetic mean of rates) offered to first class banks in the London interbank market for deposits in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of Regions Bank or any other Lender selected by the Administrative Agent, for which the Index Rate is then being determined with maturities comparable to one (1) month as of approximately 11:00 a.m. (London, England time) two (2) Business Days prior to such Index Rate Determination Date. Notwithstanding anything contained herein to the contrary, the Index Rate shall not be less than zero.

“Index Rate Determination Date” means the Closing Date and the first Business Day of each calendar month thereafter; provided, however, that, solely for purposes of the definition of Base Rate, Index Rate Determination Date means the date of determination of the Base Rate.

## ATTACHMENT 4

“Intellectual Property” means all trademarks, service marks, trade names, copyrights, patents, patent rights, franchises related to intellectual property, licenses related to intellectual property and other intellectual property rights.

“Interest Payment Date” means with respect to (a) any Base Rate Loan, the last Business Day of each calendar quarter, commencing on the first such date to occur after the Closing Date and the final maturity date of such Loan; and (b) any LIBOR Index Rate Loan, the last day of each Interest Period applicable to such Loan; provided, in the case of each Interest Period of longer than three (3) months “Interest Payment Date” shall also include each date that is three (3) months, or an integral multiple thereof, after the commencement of such Interest Period.

“Interest Period” means, in connection with an Adjusted LIBOR Rate Loan, an interest period of one (1), two (2), three (3) or six (6) months, or upon the consent of all applicable Lenders, such other period that is twelve (12) months or less, in each case subject to availability, as selected by the Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (a) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (i) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (iii) of this definition, end on the last Business Day of a calendar month; and (iii) no Interest Period with respect to the Term Loan A shall extend beyond any principal amortization payment date, except to the extent that the portion of such Term Loan A comprised of Adjusted LIBOR Rate Loans that is expiring prior to the applicable principal amortization payment date plus the portion comprised of Base Rate Loans equals or exceeds the principal amortization payment then due.

“Interest Rate Determination Date” means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

“Internal Revenue Code” means the Internal Revenue Code of 1986.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“Involuntary Disposition” means the receipt by the Borrower of any cash insurance proceeds or condemnation awards payable by reason of theft, property loss, physical property destruction or damage, taking or similar event with respect to any of its Property, and that relate to events occurring on or after the date on which the Borrower acquires an interest in the property subject to such theft, loss, or destruction.

“IRS” means the United States Internal Revenue Service.

## ATTACHMENT 4

“Lead Arrangers” means Regions Capital Markets, a division of Regions Bank, and LegacyTexas Bank, in their respective capacities as joint lead arrangers and joint book runners.

“Lender” means each financial institution with a Term Loan A Commitment, together with its successors and permitted assigns. The initial Lenders are identified on the signature pages hereto and are set forth on Appendix A.

“LIBOR” means the London Interbank Offered Rate.

“LIBOR Index Rate” means, for any Index Rate Determination Date, the rate per annum obtained by dividing (a) the Index Rate by (b) an amount equal to (i) one, minus (ii) the Applicable Reserve Requirement.

“LIBOR Index Rate Loan” means Loans bearing interest based on the LIBOR Index Rate.

“LIBOR Loan” means a Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate or LIBOR Index Rate (including a Base Rate Loan referencing the LIBOR Index Rate), as applicable.

“Lien” means (a) any lien, mortgage, pledge, collateral assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease, occupancy agreement or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (b) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

“Loan” means any Term Loan A, and the Base Rate Loans and Adjusted LIBOR Rate Loans comprising such Loans.

“Margin Stock” means as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

“Marina Property” means that certain marina property and/or marina-related assets known as Ventura Isle Marina identified by the Borrower to the Lead Arrangers as targets for acquisition by the Borrower from certain subsidiaries of CNL Lifestyle Properties, Inc.

“Marina Purchase” means the purchase by the Borrower of the Marina Property.

“Master Agreement” means as defined in the definition of “Swap Agreement”.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower, (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any of the Credit Documents, or of the ability of the Borrower to perform its obligations under any Credit Document to which it is a party or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of any Credit Document to which it is a party.

“Material Contract” means any Contractual Obligation to which the Borrower or any of its assets, are bound (other than those evidenced by the Credit Documents) for which breach, non-performance, cancellation or failure to renew would reasonably be expected to have a Material Adverse Effect.



## ATTACHMENT 4

“Material Lease” means any lease by the Borrower, as lessor, with a Tenant, as lessee, which (a) demises 10,000 rentable square feet or more of space within any buildings or other improvements on any Real Estate Asset, (b) has a remaining term, at the time of determination, of five years or more (including any renewals or options for renewal), and (c) has an annual fixed rent of at least \$100,000 for each year of the term. For purposes of determining whether a lease with a Tenant is a Material Lease, the rentable square footage of the buildings and/or other improvements leased by the Tenant shall be included in the above-referenced calculation and not the surface land area to be leased pursuant to such lease.

“Moody’s” means Moody’s Investor Services, Inc., together with its successors.

“Mortgages” means the mortgages, deeds of trust or deeds to secure debt that purport to grant to the Collateral Agent, for the benefit of the holders of the Obligations, a security interest in the real property interest (including with respect to any improvements and fixtures) of the Borrower in the Marina Property or other Real Estate Asset.

“Multiemployer Plan” means any “multiemployer plan” as defined in Section 3(37) of ERISA which is sponsored, maintained or contributed to by, or required to be contributed to by, the Borrower or any of its ERISA Affiliates or with respect to which the Borrower or any of its ERISA Affiliates previously sponsored, maintained or contributed to or was required to contributed to, and still has liability.

“National Flood Insurance Act” means the National Flood Insurance Act of 1968, as amended (42 U.S.C. §4001, et. seq.).

“Net Cash Proceeds” means the aggregate proceeds paid in cash or Cash Equivalents received by the Borrower in connection with any Asset Sale, Involuntary Disposition, Debt Transaction or Securitization Transaction, net of (a) direct costs incurred or estimated costs for which reserves are maintained, in connection therewith (including legal, accounting and investment banking and consulting fees and expenses, sales commissions and underwriting discounts); (b) estimated taxes paid or payable (including sales, use, transfer or other transactional taxes and any net marginal increase in income taxes) as a result thereof; and (c) the amount required to retire any Indebtedness secured by a Permitted Lien on the related property. For purposes hereof, “Net Cash Proceeds” includes any cash or Cash Equivalents received upon the disposition of any non-cash consideration received by the Borrower in any Asset Sale, Involuntary Disposition, Debt Transaction or Securitization Transaction.

“Non-Consenting Lender” means as defined in Section 2.17.

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

“Notice” means a Funding Notice or a Conversion/Continuation Notice.

“Obligations” means all obligations, indebtedness and other liabilities of every nature of the Borrower from time to time owed to the Agents (including former Agents), the Lenders (including former Lenders in their capacity as such) or any of them, the Qualifying Swap Banks and the Qualifying Treasury Management Banks, under any Credit Document, Secured Swap Agreement or Secured Treasury Management Agreement, together with all renewals, extensions, modifications or refinancings of any of the foregoing, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to the Borrower, would have accrued on any Obligation, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy proceeding), payments for early termination of Swap Agreements, fees, expenses, indemnification or otherwise.

## ATTACHMENT 4

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its articles of organization, certificate of formation or comparable documents, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

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

“Other Taxes” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.17).

“Outstanding Amount” means with respect to the Term Loan A on any date, the aggregate outstanding principal amount thereof after giving effect to any prepayments or repayments of the Term Loan A on such date.

“Participant” means as defined in Section 11.5(d).

“Participant Register” means as defined in Section 11.5(d).

“Patriot Act” means as defined in Section 6.15(f).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Plan” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA and which is sponsored, maintained or contributed to by, or required to be contributed to by, the Borrower or any of its ERISA Affiliates or with respect to which the Borrower or any of its ERISA Affiliates previously sponsored, maintained or contributed to, or was required to contribute to, and still has liability.

“Permitted Liens” means each of the Liens permitted pursuant to Section 8.2.

“Permitted Refinancing” means any extension, renewal or replacement of any existing Indebtedness so long as any such renewal, refinancing and extension of such Indebtedness (a) has market terms and conditions, (b) has an average life to maturity that is greater than that of the Indebtedness being extended, renewed or refinanced, (c) does not include an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (d) remains subordinated, if the Indebtedness

## ATTACHMENT 4

being refinanced or extended was subordinated to the prior payment of the Obligations, such extended, renewed or refinanced Indebtedness, (e) does not exceed in a principal amount the Indebtedness being renewed, extended or refinanced plus reasonable fees and expenses incurred in connection therewith, and (f) is not incurred, created or assumed, if any Default or Event of Default has occurred and continues to exist or would result therefrom.

“Permitted Tax Distributions” means, for such period that the Borrower is treated as a pass-through entity under the Code, cash dividends or distributions made to the holders of the Borrower’s Equity Interests not to exceed the amount necessary to provide such holders with funds to pay, at the highest applicable marginal Tax rate for any holder, any federal, state or local income Taxes for the current period as a result of the items of income, gain, loss and deduction of the Borrower allocated to such holders.

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

“Plan” has the meaning specified in Section 11.5(f).

“Platform” means as defined in Section 11.1(d).

“Pledge Agreement” means the pledge agreement dated as of the Closing Date given by Safe Harbor Marinas, as pledgor, to the Collateral Agent for the benefit of the holders of the Obligations (as defined therein), and any other pledge agreements that may be given by any Person pursuant to the terms hereof, in each case as the same may be amended and modified from time to time.

“Prepayment Amount” means the greater of (a) 55% of the Net Cash Proceeds received by the Borrower from the applicable Asset Sale or Involuntary Disposition and (b) the Release Value of such asset; provided that if the applicable Asset Sale or Involuntary Disposition only concerns a portion of an asset that has been appraised in accordance with Section 7.17(b), the Prepayment Amount with respect to such asset shall not exceed the amount necessary for the Borrower to be in compliance with the covenant in Section 8.8(a) after giving effect to such Asset Sale or Involuntary Disposition on a Pro Forma Basis.

“Prime Rate” means the per annum rate which the Administrative Agent publicly announces from time to time to be its prime lending rate, as in effect from time to time. The Administrative Agent’s prime lending rate is a reference rate and does not necessarily represent the lowest or best rate charged to customers.

“Principal Office” means the Administrative Agent’s “Principal Office” as set forth on Appendix B, or such other office as it may from time to time designate in writing to the Borrower and each Lender.

“Pro Forma Basis” means, for purposes of calculating the financial covenants set forth in Section 8.8 (other than the Consolidated Pre-Distribution Fixed Charge Coverage Ratio and, subject to the last sentence of this definition, the Consolidated Post-Distribution Fixed Charge Coverage Ratio) that any Asset Sale, Involuntary Disposition, Acquisition or Restricted Payment, or any other transaction subject to calculation on a Pro Forma Basis as indicated herein, shall be deemed to have occurred as of the first day of the most recent four Fiscal Quarter period preceding the date of such transaction for which the Borrower was required to deliver financial statements pursuant to Section 7.1(a) or (b). In connection with the foregoing, (i) with respect to any Asset Sale or Involuntary Disposition, income statement and cash flow statement items (whether positive or negative) attributable to the property disposed of shall be excluded to the extent relating to any period occurring prior to the date of such transaction and (ii) with

respect to any Acquisition, income statement items attributable to the Person or property acquired shall be included to the extent relating to any period applicable in such calculations to the extent (A) such items are not otherwise included in such income statement items for the Borrower in accordance with GAAP or in accordance with any defined terms set forth in Section 1.1 and (B) such items are supported by financial statements or other information satisfactory to the Administrative Agent. Notwithstanding the foregoing, it is understood and agreed that the calculation of the Consolidated Post-Distribution Fixed Charge Coverage Ratio for purposes of Section 8.4(f) only shall be made on a Pro Forma Basis solely with respect to (a) any Restricted Payment to be made pursuant to such Section 8.4(f) and (b) any Restricted Payment made pursuant to Section 8.4(f) during the earliest Fiscal Quarter of the most recent four Fiscal Quarter period for which the Borrower was required to deliver financial statements pursuant to Section 7.1(a) or (b) preceding the date of such transaction (for example, if a Restricted Payment pursuant to Section 8.4(f) is to be made on October 15, 2016, then (x) all components of such calculation, other than the Restricted Payments made in cash in the numerator (i.e., Consolidated EBITDAR, Consolidated Taxes, Consolidated Maintenance Capital Expenditures, Specified Capital Expenditures, total revenue and Consolidated Fixed Charges) shall be calculated as of June 30, 2016 using the financial statements and Compliance Certificate delivered to the Administrative Agent for such period pursuant to Section 7.1(a) minus any Restricted Payment made pursuant to Section 8.4(f) during the Fiscal Quarter ended September 30, 2015 and (y) such Restricted Payments to be made in cash shall be calculated after giving effect to the Restricted Payment to occur on October 15, 2016).

“Property” means an interest of any kind in any property or asset, whether real, personal or mixed, and whether tangible or intangible.

“Purchase Agreement” has the meaning set forth in Section 5.1(f).

“Qualifying Equity Interests” means Equity Interests other than Disqualified Equity Interests.

“Qualifying Swap Bank” means (a) any of Regions Bank and its Affiliates, and (b) any Person that (i) at the time it enters into a Swap Agreement, is a Lender or an Affiliate of a Lender, or (ii) in the case of a Swap Agreement in effect on or prior to the Closing Date, is, as of the Closing Date or within thirty (30) days thereafter, a Lender or an Affiliate of a Lender, and, in each such case, shall have provided a Secured Party Designation Notice to the Administrative Agent within thirty (30) days of entering into the Swap Agreement or otherwise becoming eligible in respect thereof. For purposes hereof, the term “Lender” shall be deemed to include the Administrative Agent.

“Qualifying Treasury Management Bank” means (a) any of Regions Bank and its Affiliates, and (b) any Person that (A) at the time it enters into a Treasury Management Agreement, is a Lender or an Affiliate of a Lender, or (B) in the case of a Treasury Management Agreement in effect on or prior to the Closing Date, is, as of the Closing Date or within thirty (30) days thereafter, a Lender or an Affiliate of a Lender, and, in each such case, shall have provided a Secured Party Designation Notice to the Administrative Agent within thirty (30) days of entering into the Treasury Management Agreement or otherwise becoming eligible in respect thereof. For purposes hereof, the term “Lender” shall be deemed to include the Administrative Agent.

“Real Estate Asset” means, at any time of determination, any interest (fee, leasehold or similar interest) then owned by the Borrower in the Marina Property or other real property asset.

“Recipient” means (a) the Administrative Agent and (b) any Lender, as applicable.

“Register” means as defined in Section 11.5(c).

## ATTACHMENT 4

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

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“Release Value” means, for any asset of the Borrower (other than the Marina Property), an amount equal to 55% of the appraised market value (going concern) of such asset as provided in the most recent appraisal accepted by the Administrative Agent.

“Removal Effective Date” means as defined in Section 10.6(b).

“Required Lenders” means, as of any date of determination, (x) in the event that there are four or fewer Lenders, Lender(s) having Total Credit Exposure representing more than sixty-six and two-thirds percent (66 2/3%) of the Total Credit Exposures of all Lenders and (y) in the event that there are five or more Lenders, Lenders having Total Credit Exposure representing more than fifty percent (50%) of the Total Credit Exposures of all Lenders; provided that the Total Credit Exposure of any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders. For purposes of determining the number of Lenders as contemplated in this defined term, any Lender or Lenders that are Affiliates of one another shall constitute one Lender.

“Resignation Effective Date” means as defined in Section 10.6(a).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of the Borrower, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent Person thereof), or any setting apart of funds or property for any of the foregoing.

“Safe Harbor Marinas” means Safe Harbor Marinas, LLC, a Delaware limited liability company.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., together with its successors.

“Sale and Leaseback Transaction” means, with respect to the Borrower, any arrangement, directly or indirectly, with any Person whereby the Borrower shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanctioned Country” means (a) a country, territory or a government of a country or territory, (b) an agency of the government of a country or territory, or (c) an organization directly or indirectly owned or controlled by a country, territory or its government, that is subject to Sanctions.

“Sanctioned Person” means (a) a Person named on the list of Specially Designated Nationals or any other Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of

## ATTACHMENT 4

State, the United Nations Security Council, the European Union or any European Union member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, (c) the European Union, (d) any European Union member state, (e) Her Majesty’s Treasury of the United Kingdom or (f) any other relevant sanctions authority.

“SEC” means the United States Securities and Exchange Commission.

“Secured Party Designation Notice” means a notice in the form of Exhibit 1.1 (or other writing in form and substance satisfactory to the Administrative Agent) from a Qualifying Swap Bank or a Qualifying Treasury Management Bank to the Administrative Agent that it holds Obligations entitled to share in the guaranties and collateral interests provided herein in respect of a Secured Swap Agreement or Secured Treasury Management Agreement, as appropriate.

“Secured Swap Agreement” means any Swap Agreement between the Borrower, on the one hand, and a Qualifying Swap Bank, on the other hand. For the avoidance of doubt, a holder of Obligations in respect of a Secured Swap Agreement shall be subject to the provisions of Sections 9.3 and 10.10.

“Secured Swap Obligations” means all obligations owing to a Qualifying Swap Bank in connection with any Secured Swap Agreement including any and all cancellations, buy backs, reversals, terminations or assignments of any Secured Swap Agreement, any and all renewals, extensions and modifications of any Secured Swap Agreement and any and all substitutions for any Secured Swap Agreement, including all fees, costs, expenses and indemnities, whether primary, secondary, direct, fixed or otherwise (including any monetary obligations incurred during the pendency of any bankruptcy or insolvency proceedings, regardless of whether allowed or allowable in such bankruptcy or insolvency proceedings), in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

“Secured Treasury Management Agreement” means any Treasury Management Agreement between the Borrower, on the one hand, and a Qualifying Treasury Management Bank, on the other hand. For the avoidance of doubt, a holder of Obligations in respect of a Secured Treasury Management Agreement shall be subject to the provisions of Section 9.3 and 10.10.

“Secured Treasury Management Obligations” means all obligations owing to a Qualifying Treasury Management Bank under a Secured Treasury Management Agreement, including all fees, costs, expenses and indemnities, whether primary, secondary, direct, fixed or otherwise (including any monetary obligations incurred during the pendency of any bankruptcy or insolvency proceedings, regardless of whether allowed or allowable in such bankruptcy or insolvency proceedings), in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

“Securities” means any stock, shares, partnership interests, limited liability company interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement (e.g., stock appreciation rights), options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in

## ATTACHMENT 4

temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Securitization Transaction” means any financing or factoring or similar transaction (or series of such transactions) entered by the Borrower pursuant to which the Borrower may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment (the “Securitization Receivables”) to a special purpose subsidiary or affiliate (a “Securitization Subsidiary”) or any other Person.

“Security Agreement” means the security agreement dated as of the Closing Date given by the Borrower, as pledgor, to the Collateral Agent for the benefit of the holders of the Obligations (as defined therein), and any other pledge agreements or security agreements that may be given by any Person pursuant to the terms hereof, in each case as the same may be amended and modified from time to time.

“Seller” and “Sellers” mean the seller or sellers of the Marina Property.

“SNDA” means, with respect to any lease with respect to a Real Estate Asset, a subordination, non-disturbance and attornment agreement by and between the Collateral Agent, on behalf of the Lenders, and the Tenant that is a party to such lease, in (a) the form that such Tenant is required to provide to a lender pursuant to the terms of its lease (with such revisions as are reasonably required by the Administrative Agent) or (b) such other form as is reasonably acceptable to the Collateral Agent.

“Solvent” or “Solvency” means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (e) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Capital Expenditures” means, for any period, capital expenditures made using the proceeds of a capital reserve account of the Borrower that has been funded solely from the Net Cash Proceeds of any issuance of Equity Interests (other than Disqualified Equity Interests) of Safe Harbor Marinas (and, thereafter, an issuance of Equity Interests by the Borrower to Safe Harbor Marinas) made at any time during such period or any prior period, provided that following any capital expenditure designated by the Borrower as a Specified Capital Expenditure, any quarterly or annual financial statements, as applicable, of the Borrower with respect to the fiscal period during which such Specified Capital Expenditure was made must show a dollar-for-dollar reduction of such capital reserve account that correlates to such capital expenditure.

“Sponsor” means American Infrastructure MLP Fund II, L.P., a Delaware limited partnership (“AIM”), and any other existing or future fund or other investment vehicle that is controlled, directly or indirectly, by one or more of the principals of AIM (the term “control” for purposes of this definition

## ATTACHMENT 4

shall mean the power to direct or cause the direction of the management or policies of such fund or other investment vehicle).

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than fifty percent (50%) of the Voting Stock is at the time owned or controlled, directly or indirectly, by that Person, or the accounts of which would be consolidated with those of such Person in its consolidated financial statements in accordance with GAAP, if such statements were prepared as of such date, or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

“Swap Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options or warrants to enter into any of the foregoing), whether or not any such transaction is governed by, or otherwise subject to, any master agreement or any netting agreement, and (b) any and all transactions or arrangements of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement (or similar documentation) published from time to time by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such agreement or documentation, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Provider” means any Person that is a party to a Swap Agreement with the Borrower.

“Swap Termination Value” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

“Synthetic Lease” means a lease transaction under which the parties intend that (a) the lease will be treated as an “operating lease” by the lessee pursuant to Statement of Financial Accounting Standards No. 13, as amended and (b) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

“Tangible Assets” means all assets other than assets that are considered to be intangible assets under GAAP (which intangible assets include, without limitation, customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs).

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



## ATTACHMENT 4

“Tenant” means any Person who is a lessee with respect to any lease held by the Borrower as lessor or as an assignee of the lessor thereunder.

“Term Loan A” means as defined in Section 2.1(b).

“Term Loan A Commitment” means, for each Lender, the commitment of such Lender to make a portion of the Term Loan A hereunder. The Term Loan A Commitment of each Lender as of the Closing Date is set forth on Appendix A. The aggregate principal amount of the Term Loan A Commitments of all of the Lenders as in effect on the Closing Date is SIX MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS (\$6,650,000).

“Term Loan A Commitment Percentage” means, for each Lender, a fraction (expressed as a percentage carried to the ninth decimal place), (a) the numerator of which is the outstanding principal amount of such Lender’s portion of the Term Loan A, and (b) the denominator of which is the aggregate outstanding principal amount of the Term Loan A. The initial Term Loan A Commitment Percentage of each Lender as of the Closing Date is set forth on Appendix A.

“Term Loan A Maturity Date” means September 29, 2020.

“Term Loan A Note” means a promissory note in the form of Exhibit 2.5, as it may be amended, supplemented or otherwise modified from time to time.

“Title Policy” means as defined in Section 7.11(b)(iii).

“Total Credit Exposure” means, as to any Lender at any time, the Outstanding Amount of the Term Loan A of such Lender at such time.

“Trade Date” has the meaning specified in Section 11.5(f).

“Treasury Management Agreement” means any agreement governing the provision of treasury or cash management services, including deposit accounts, funds transfer, automated clearinghouse, commercial credit cards, purchasing cards, cardless e-payable services, debit cards, stored value cards, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services.

“Type of Loan” means a Base Rate Loan or a LIBOR Loan.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in the State of New York (or any other applicable jurisdiction, as the context may require).

“United States” or “U.S.” means the United States of America.

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

“U.S. Tax Compliance Certificate” means as defined in Section 3.3(f).

“Voting Stock” means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

“Withholding Agent” means the Borrower and the Administrative Agent.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.2 Accounting Terms.

(a) Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by the Borrower to the Lenders pursuant to clauses (a), (b), (c) and (d) of Section 7.1 shall be prepared in accordance with GAAP as in effect at the time of such preparation. If at any time any change in GAAP or in the consistent application thereof would affect the computation of any financial covenant or requirement set forth in any Credit Document, and either the Borrower or the Required Lenders shall object in writing to determining compliance based on such change, then the Lenders and Borrower shall negotiate in good faith to amend such financial covenant, requirement or applicable defined terms to preserve the original intent thereof in light of such change to GAAP, provided that, until so amended such computations shall continue to be made on a basis consistent with the most recent financial statements delivered pursuant to clauses (a), (b), (c) and (d) of Section 7.1 as to which no such objection has been made.

(b) Calculations. Notwithstanding the above, the parties hereto acknowledge and agree that all calculations of the financial covenants in Section 8.8 (other than the Consolidated Pre-Distribution Fixed Charge Coverage Ratio and, subject to the last sentence of this Section 1.2(b), the Consolidated Post-Distribution Fixed Charge Coverage Ratio) (including for purposes of any transaction that by the terms of this Agreement requires that any financial covenant contained in Section 8.8 be calculated on a Pro Forma Basis) and the Consolidated Leverage Ratio where used herein shall be made on a Pro Forma Basis with respect to any Asset Sale, Involuntary Disposition, Acquisition, Restricted Payment or incurrence of Indebtedness, or any other transaction subject to calculation on a Pro Forma Basis as indicated herein, occurring during such period. Notwithstanding the foregoing, it is understood and agreed that the calculation of the Consolidated Post-Distribution Fixed Charge Coverage Ratio for purposes of Section 8.4(f) shall be made in accordance with the last sentence of the definition of “Pro Forma Basis”.

(c) FASB ASC 825 and FASB ASC 470-20. Notwithstanding the above, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

Section 1.3 Rules of Interpretation.

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as

## ATTACHMENT 4

from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto", "herein," "hereof" and "hereunder," and words of similar import when used in any Credit Document, shall be construed to refer to such Credit Document in its entirety and not to any particular provision hereof or thereof, (iv) all references in a Credit Document to Sections, Exhibits, Appendices and Schedules shall be construed to refer to Sections of, and Exhibits, Appendices and Schedules to, the Credit Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any references to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) The terms lease and license shall include sub-lease and sub-license.

(c) All terms not specifically defined herein or by GAAP, which terms are defined in the UCC, shall have the meanings assigned to them in the UCC of the relevant jurisdiction, with the term "instrument" being that defined under Article 9 of the UCC of such jurisdiction.

(d) Unless otherwise expressly indicated, in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including".

(e) To the extent that any of the representations and warranties contained in Section 6 under this Agreement or in any of the other Credit Documents is qualified by "Material Adverse Effect", the qualifier "in all material respects" contained in Section 5.2(c) and the qualifier "in any material respect" contained in Section 9.1(d) shall not apply.

(f) Whenever the phrase "to the knowledge of" or words of similar import relating to the knowledge of a Person are used herein or in any other Credit Document, such phrase shall mean and refer to the actual knowledge of the Authorized Officers of such Person.

(g) This Agreement and the other Credit Documents are the result of negotiation among, and have been reviewed by counsel to, among others, the Administrative Agent and Borrower, and are the product of discussions and negotiations among all parties. Accordingly, this Agreement and the other Credit Documents are not intended to be construed against the Administrative Agent or any of the Lenders merely on account of the Administrative Agent's or any Lender's involvement in the preparation of such documents.

(h) Unless otherwise indicated, all references to a specific time shall be construed to Eastern Standard Time or Eastern Daylight Savings Time, as the case may be. Unless otherwise expressly provided herein, all references to dollar amounts and "\$" shall mean Dollars.

### Section 2. LOANS

#### Section 2.1 Term Loan A.

(a) [Intentionally Omitted].

## ATTACHMENT 4

(b) Subject to the terms and conditions set forth herein, the Lenders will make advances of their respective Term Loan A Commitment Percentages of a term loan (the “Term Loan A”) in an amount not to exceed the Term Loan A Commitment, which Term Loan A will be disbursed to the Borrower in Dollars in a single advance on the Closing Date. The Term Loan A may consist of Base Rate Loans, Adjusted LIBOR Rate Loans, or a combination thereof, as the Borrower may request. Amounts repaid on the Term Loan A may not be reborrowed.

(c) [Intentionally Omitted].

(d) Mechanics for Term Loan A.

(i) The Term Loan A shall be made in the full amount of the Term Loan A Commitment on the Closing Date.

(ii) Whenever the Borrower desires that the Lenders make a Term Loan A, the Borrower shall deliver to the Administrative Agent a fully executed Funding Notice no later than (x) 1:00 p.m. at least three (3) Business Days in advance of the proposed Credit Date in the case of an Adjusted LIBOR Rate Loan and (y) 1:00 p.m. at least one (1) Business Day in advance of the proposed Credit Date in the case of a Loan that is a Base Rate Loan. Except as otherwise provided herein, any Funding Notice for any Loans that are Adjusted LIBOR Rate Loans shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to make a borrowing in accordance therewith.

(iii) Notice of receipt of the Funding Notice in respect of the Term Loan A, together with the amount of each Lender’s Term Loan A Commitment Percentage thereof, respectively, if any, together with the applicable interest rate, shall be provided by the Administrative Agent to each applicable Lender by telefacsimile with reasonable promptness, but (provided the Administrative Agent shall have received such notice by 1:00 p.m.) not later than 4:00 p.m. on the same day as the Administrative Agent’s receipt of such notice from the Borrower.

(iv) Each Lender shall make its Term Loan A Commitment Percentage of the requested Term Loan A available to the Administrative Agent not later than 11:00 a.m. on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Administrative Agent’s Principal Office. Except as provided herein, upon satisfaction or waiver of the applicable conditions precedent specified herein, the Administrative Agent shall make the proceeds of such Credit Extension available to the Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all Loans received by the Administrative Agent in connection with the Credit Extension from the Lenders to be credited to the account of the Borrower at the Administrative Agent’s Principal Office or such other account as may be designated in writing to the Administrative Agent by the Borrower.

Section 2.2 [Intentionally Omitted].

Section 2.3 [Intentionally Omitted].

Section 2.4 Pro Rata Shares; Availability of Funds.

## ATTACHMENT 4

(a) Pro Rata Shares. All Loans shall be made, and all participations purchased, by the Lenders simultaneously and proportionately to their respective pro rata shares of the Loans, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder nor shall any Term Loan A Commitment, or the portion of the aggregate outstanding principal amount of the Term Loan A, of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds.

(i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.1(d) or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.1(d) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans, plus, in either case, any administrative, processing or similar fees customarily charged by the Administrative Agent in connection therewith. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by the Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal

## ATTACHMENT 4

Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Notices given by the Administrative Agent under this subsection (b) shall be conclusive absent manifest error.

### Section 2.5 Evidence of Debt; Register; Lenders' Books and Records; Term Loan A Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of the Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on the Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Term Loan A Commitment or the Borrower's obligations in respect of any applicable Loans; and provided, further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern in the absence of demonstrable error therein.

(b) Term Loan A Notes. The Borrower shall execute and deliver to each (i) Lender on the Closing Date and (ii) Person who is a permitted assignee of such Lender pursuant to Section 11.5, in each case to the extent requested by such Person, a Term Loan A Note or Term Loan A Notes to evidence such Person's portion of the Term Loan A.

### Section 2.6 Scheduled Principal Payments.

(a) [Intentionally Omitted].

(b) [Intentionally Omitted].

(c) Term Loan A. Commencing with the Fiscal Quarter ending December 31, 2017, the principal amount of the Term Loan A shall be repaid in equal quarterly installments equal to 4.35% per annum of the principal amount of the Term Loan A actually advanced (as such installments may hereafter be adjusted as a result of any voluntary or mandatory prepayments made pursuant to Section 2.11), unless accelerated sooner pursuant to Section 9. The outstanding principal amount of the Term Loan A is due and payable in full on the Term Loan A Maturity Date.

### Section 2.7 Interest on Loans.

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Loan (including a Base Rate Loan referencing the LIBOR Index Rate), the Base Rate plus the Applicable Margin; or

(ii) if an Adjusted LIBOR Rate Loan, the Adjusted LIBOR Rate plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any Adjusted LIBOR Rate Loan, shall be selected by the Borrower

## ATTACHMENT 4

and notified to the Administrative Agent and the Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to the Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day (i) if such Loan is an Adjusted LIBOR Rate Loan, such Loan shall become a Base Rate Loan and (ii) if such Loan is a Base Rate Loan, such Loan shall remain a Base Rate Loan.

(c) In connection with Adjusted LIBOR Rate Loans, there shall be no more than four (4) Interest Periods outstanding at any time. In the event the Borrower fails to specify between a Base Rate Loan or an Adjusted LIBOR Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (i) if outstanding as an Adjusted LIBOR Rate Loan, will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan, and (ii) if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan. In the event the Borrower fails to specify an Interest Period for any Adjusted LIBOR Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, the Borrower shall be deemed to have selected an Interest Period of one (1) month. As soon as practicable after 10:00 a.m. on each Interest Rate Determination Date and each Index Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to each of the LIBOR Loans for which an interest rate is then being determined (and for the applicable Interest Period in the case of Adjusted LIBOR Rate Loans) and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender.

(d) Interest payable pursuant to this Section 2.7 shall be computed on the basis of (i) for interest at the Base Rate (including Base Rate Loans determined by reference to the LIBOR Index Rate), a year of three hundred sixty-five (365) or three hundred sixty-six (366) days, as the case may be, and (ii) for all other computations of fees and interest, a year of three hundred sixty (360) days, in each case, for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from an Adjusted LIBOR Rate Loan, the date of conversion of such Adjusted LIBOR Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to an Adjusted LIBOR Rate Loan, the date of conversion of such Base Rate Loan to such Adjusted LIBOR Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan shall accrue on a daily basis and shall be payable in arrears on and to (i) each Interest Payment Date applicable to that Loan; (ii) upon any prepayment of that Loan (other than a voluntary prepayment of the Term Loan A which interest shall be payable in accordance with clause (i) above), to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity.

### Section 2.8 Conversion/Continuation.

(a) So long as no Default or Event of Default shall have occurred and then be continuing or would result therefrom, the Borrower shall have the option:

## ATTACHMENT 4

(i) to convert at any time all or any part of any Loan equal to \$100,000 and integral multiples of \$50,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, an Adjusted LIBOR Rate Loan may only be converted on the expiration of the Interest Period applicable to such Adjusted LIBOR Rate Loan unless the Borrower shall pay all amounts due under Section 3.1(c) in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Adjusted LIBOR Rate Loan, to continue all or any portion of such Loan as an Adjusted LIBOR Rate Loan.

(b) The Borrower shall deliver a Conversion/Continuation Notice to the Administrative Agent no later than 1:00 p.m. at least three (3) Business Days in advance of the proposed Conversion/Continuation Date. Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Adjusted LIBOR Rate Loans (or telephonic notice in lieu thereof) shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to effect a conversion or continuation in accordance therewith.

### Section 2.9 Default Rate of Interest.

(a) If any amount of principal of any Loan is not paid when due, whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(b) If any amount (other than principal of any Loan) payable by the Borrower under any Credit Document is not paid when due (after the expiration of any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then at the written request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(c) During the continuance of an Event of Default under Section 9.1(f) or Section 9.1(g), the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(d) During the continuance of an Event of Default other than an Event of Default under Section 9.1(f) or Section 9.1(g), the Borrower shall, at the written request of the Required Lenders, pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

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

(f) In the case of any Adjusted LIBOR Rate Loan, upon the expiration of the Interest Period in effect at the time the Default Rate of interest is effective, each such Adjusted LIBOR Rate Loan shall thereupon become a Base Rate Loan and shall thereafter bear interest at the Default Rate then in effect for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.9 is not a permitted alternative to timely payment and shall



## ATTACHMENT 4

not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lender.

Section 2.10 Fees. The Borrower shall pay to Regions Capital Markets, a division of Regions Bank, and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, except to the extent set forth in the Fee Letter.

### Section 2.11 Prepayments/Commitment Reductions.

#### (a) Voluntary Prepayments.

(i) Any time and from time to time, the Loans may be repaid in whole or in part without premium or penalty (subject to Section 3.1):

(A) with respect to Base Rate Loans (including Base Rate Loans referencing the LIBOR Index Rate), the Borrower may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of \$100,000 and integral multiples of \$50,000 in excess of that amount; and

(B) with respect to Adjusted LIBOR Rate Loans, the Borrower may prepay any such Loans on any Business Day in whole or in part (together with any amounts due pursuant to Section 3.1(c)) in an aggregate minimum amount of \$100,000 and integral multiples of \$50,000 in excess of that amount;

(ii) All such prepayments shall be made:

(A) upon written or telephonic notice on the date of prepayment in the case of Base Rate Loans; and

(B) upon not less than three (3) Business Days' prior written or telephonic notice in the case of Adjusted LIBOR Rate Loans;

in each case given to the Administrative Agent by 11:00 a.m. on the date required and, if given by telephone, promptly confirmed in writing to the Administrative Agent (and the Administrative Agent will promptly transmit such telephonic or original notice for a Credit Extension by telefacsimile or telephone to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.12(a).

(b) [Intentionally Omitted].

#### (c) Mandatory Prepayments.

(i) [Intentionally Omitted].

(ii) Asset Sales and Involuntary Dispositions. Prepayment will be made on the Obligations on the Business Day following receipt of Net Cash Proceeds in excess of \$100,000 in the aggregate in any Fiscal Year required to be prepaid pursuant to the provisions hereof in an amount equal to the Prepayment Amount received from any Asset Sale or Involuntary Disposition by the Borrower; provided, however, that (x) in the case

## ATTACHMENT 4

of Asset Sales, so long as no Default or Event of Default shall have occurred and be continuing, such Net Cash Proceeds shall not be required to be so applied, at the election of the Borrower (as notified by the Borrower to the Administrative Agent) to the extent the Borrower reinvests or expends all or any portion of such Net Cash Proceeds in assets (other than current assets as classified by GAAP) within one hundred eighty (180) days after the receipt of such Net Cash Proceeds and (y) in the case of Involuntary Dispositions, such Net Cash Proceeds shall be reinvested in assets (other than current assets as classified by GAAP) to be used at the Marina Property as required by the terms of the Ground Lease with respect thereto within one hundred eighty (180) days after the receipt of such Net Cash Proceeds. If Net Cash Proceeds are to be reinvested or expended in accordance with the proviso in the immediately foregoing sentence, until such Net Cash Proceeds are required for such reinvestment or expenditure, such Net Cash Proceeds shall be deposited on the Business Day following receipt thereof in a segregated cash collateral account maintained by the Borrower with the Administrative Agent from which proceeds shall be released by the Administrative Agent (in the case of clauses (A) and (B) below, promptly after notice by the Borrower) only for the following purposes: (A) prompt reinvestment or expenditure in accordance with the proviso in the foregoing sentence, (B) application pursuant to Section 2.12(b)(ii), which action the Borrower shall request the Administrative Agent to take no later than the date one hundred eighty (180) days after receipt of such Net Cash Proceeds or (C) application pursuant to Section 9.3 in connection with an exercise of remedies pursuant to Section 9.2.

(iii) Debt Transactions. Prepayment will be made on the Obligations in an amount equal to one hundred percent (100%) of the Net Cash Proceeds from any Debt Transactions on the Business Day following receipt thereof.

Section 2.12 Application of Prepayments. Within each Loan, prepayments will be applied first to Base Rate Loans, then to LIBOR Loans in direct order of Interest Period maturities. In addition:

(a) Voluntary Prepayments. Voluntary prepayments will be applied ratably to remaining principal installments of the Term Loan A then outstanding.

(b) Mandatory Prepayments. Mandatory prepayments in respect of Asset Sales and Involuntary Dispositions under Section 2.11(c)(ii) above and Debt Transactions under Section 2.11(c)(iii) shall be applied ratably to the remaining principal installments of the Term Loan A then outstanding.

(c) Prepayments on the Obligations will be paid by the Administrative Agent to the Lenders ratably in accordance with their respective interests therein (except for Defaulting Lenders where their share will be applied as provided in Section 2.16(a)(ii) hereof).

Section 2.13 General Provisions Regarding Payments.

(a) All payments by the Borrower of principal, interest, fees and other Obligations hereunder or under any other Credit Document shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition. The Administrative Agent shall, and the Borrower hereby authorizes the Administrative Agent to, debit a deposit account of the Borrower held with the Administrative Agent or any of its Affiliates and designated for such purpose by the Borrower in order to cause timely payment to be made to the Administrative Agent of all principal, interest and fees due hereunder or under any

## ATTACHMENT 4

other Credit Document (subject to sufficient funds being available in its accounts for that purpose).

(b) In the event that the Administrative Agent is unable to debit a deposit account of the Borrower held with the Administrative Agent or any of its Affiliates in order to cause timely payment to be made to the Administrative Agent of all principal, interest and fees due hereunder or any other Credit Document (including because insufficient funds are available in its accounts for that purpose), payments hereunder and under any other Credit Document shall be delivered to the Administrative Agent, for the account of the Lenders, not later than 2:00 p.m. on the date due at the Principal Office of the Administrative Agent or via wire transfer of immediately available funds to an account designated by the Administrative Agent (or at such other location as may be designated in writing by the Administrative Agent from time to time); for purposes of computing interest and fees, funds received by the Administrative Agent after that time on such due date shall be deemed to have been paid by the Borrower on the next Business Day.

(c) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(d) The Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable pro rata share of all payments and prepayments of principal and interest due to such Lender hereunder, together with all other amounts due with respect thereto, including all fees payable with respect thereto, to the extent received by the Administrative Agent.

(e) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its pro rata share of any Adjusted LIBOR Rate Loans, the Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(f) Subject to the provisos set forth in the definition of "Interest Period," whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder, but such payment shall be deemed to have been made on the date therefor for all other purposes hereunder.

(g) The Administrative Agent may, but shall not be obligated to, deem any payment by or on behalf of the Borrower hereunder that is not made in same day funds prior to 2:00 p.m. to be a non-conforming payment. Any such payment shall not be deemed to have been received by the Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. The Administrative Agent shall give prompt telephonic notice to the Borrower and each applicable Lender (in each case, confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 9.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the Default Rate (unless otherwise provided by the Required Lenders) from the date such amount was due and payable until the date such amount is paid in full.

## ATTACHMENT 4

Section 2.14 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

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

(ii) the provisions of this Section 2.14 shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or a Competitor) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or other obligations hereunder to any assignee or participant, other than to the Borrower (as to which the provisions of this Section 2.14 shall apply).

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

Section 2.15 [Intentionally Omitted].

Section 2.16 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 11.4(a)(iii).

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amount (other than fees which any Defaulting Lender is not entitled to receive pursuant to Section 2.16(a)(iii)) received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 9 or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 11.3), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the

Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and sixth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that, if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to the pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with their Term Loan A Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.16(a)(ii) shall be deemed paid to (and the underlying obligations satisfied to the extent of such payment) and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the Term Loan A Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.17 Removal or Replacement of Lenders. If (a) any Lender requests compensation under Section 3.2, (b) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.3, (c) any Lender gives notice of an inability to fund LIBOR Loans under Section 3.1(b), (d) any Lender is a Defaulting Lender, or (e) any Lender (a "Non-Consenting Lender") does not consent (including by way of a failure to respond in writing to a proposed amendment, consent or waiver by the date and time specified by the Administrative Agent) to a proposed amendment, consent, change, waiver, discharge or termination hereunder or with respect to any Credit Document that has been approved by the Required Lenders, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.5, all of its interests, rights (other than its rights under Section 3.2, Section 3.3 and Section 11.2) and obligations under this Agreement and the related Credit Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

## ATTACHMENT 4

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 11.5(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Credit Documents (including any amounts under Section 3.1(c)) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.2 or payments required to be made pursuant to Section 3.3, such assignment is reasonably expected to result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any such assignment resulting from a Non-Consenting Lender's failure to consent to a proposed amendment, consent, change, waiver, discharge or termination, the successor replacement Lender shall have consented to the proposed amendment, consent, change, waiver, discharge or termination.

Each Lender agrees that in the event it, or its interests in the Loans and obligations hereunder, shall become subject to the replacement and removal provisions of this Section 2.17, it will cooperate with the Borrower and the Administrative Agent to give effect to the provisions hereof, including execution and delivery of an Assignment Agreement in connection therewith, but the replacement and removal provisions of this Section 2.17 shall be effective regardless of whether an Assignment Agreement shall have been given.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

### **Section 3. YIELD PROTECTION**

#### **Section 3.1 Making or Maintaining LIBOR Loans.**

(a) Inability to Determine Applicable Interest Rate. In the event that the Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date or any Index Rate Determination Date with respect to any LIBOR Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such LIBOR Loans on the basis provided for in the definition of Adjusted LIBOR Rate or LIBOR Index Rate, as applicable, the Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, LIBOR Loans until such time as the Administrative Agent notifies the Borrower and the Lenders in writing that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by the Borrower with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by the Borrower

## ATTACHMENT 4

and such Loans shall be automatically made or continued as, or converted to, as applicable, Base Rate Loans without reference to the LIBOR Index Rate component of the Base Rate.

(b) Illegality or Impracticability of LIBOR Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with the Borrower and the Administrative Agent) that the making, maintaining or continuation of its LIBOR Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an “Affected Lender” and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower and the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make Loans as, or to convert Loans to, LIBOR Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a LIBOR Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan without reference to the LIBOR Index Rate component of the Base Rate, (3) the Affected Lender’s obligation to maintain its outstanding LIBOR Loans (the “Affected Loans”) shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into Base Rate Loans without reference to the LIBOR Index Rate component of the Base Rate on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a LIBOR Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Borrower shall have the option, subject to the provisions of Section 3.1(a), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to the Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission the Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 3.1(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, LIBOR Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. The Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable out-of-pocket losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Lender to lenders of funds borrowed by it to make or carry its Adjusted LIBOR Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender sustains: (i) if for any reason (other than a default by such Lender) a borrowing of any Adjusted LIBOR Rate Loans does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any Adjusted LIBOR Rate Loans does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal

payment of, or any conversion of, any of its Adjusted LIBOR Rate Loans occurs on any day other than the last day of an Interest Period applicable to that Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise), including as a result of an assignment in connection with the replacement of a Lender pursuant to Section 2.17; or (iii) if any prepayment of any of its Adjusted LIBOR Rate Loans is not made on any date specified in a notice of prepayment given by the Borrower.

(d) Booking of LIBOR Loans. Any Lender may make, carry or transfer LIBOR Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of Adjusted LIBOR Rate Loans. Calculation of all amounts payable to a Lender under this Section 3.1 and under Section 3.2 shall be made as though such Lender had actually funded each of its relevant Adjusted LIBOR Rate Loans through the purchase of a LIBOR deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of Adjusted LIBOR Rate in an amount equal to the amount of such Adjusted LIBOR Rate Loans and having a maturity comparable to the relevant Interest Period and through the transfer of such LIBOR deposit from an offshore office of such Lender to a domestic office of such Lender in the United States; provided, however, each Lender may fund each of its Adjusted LIBOR Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 3.1 and under Section 3.2.

(f) Certificates for Reimbursement. A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender, as specified in paragraph (c) of this Section 3.1 and the circumstances giving rise thereto shall be delivered to the Borrower and shall be conclusive absent manifest error. In the absence of any such manifest error, the Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(g) Delay in Requests. The Borrower shall not be required to compensate a Lender pursuant to this Section 3.1 for any such amounts incurred more than six (6) months prior to the date that such Lender delivers to the Borrower the certificate referenced in Section 3.1(f).

#### Section 3.2 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted LIBOR Rate or the LIBOR Index Rate);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;



and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender or such other Recipient, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender or other Recipient, the Borrower promptly will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital and Liquidity Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the commitments of such Lender hereunder or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 3.2 and the circumstances giving rise thereto shall be delivered to the Borrower and shall be conclusive absent manifest error. In the absence of any such manifest error, the Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.2 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 3.2 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender delivers to the Borrower the certificate referenced in Section 3.2(c) and notifies the Borrower in writing of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

### Section 3.3 Taxes.

(a) Applicable Law. For purposes of this Section 3.3, the term "Applicable Law" shall include FATCA.

(b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Credit Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or

## ATTACHMENT 4

withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.3) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Tax Indemnification. (i) The Borrower shall indemnify each Recipient and shall make payment in respect thereof within ten (10) Business Days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.3) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall severally indemnify the Administrative Agent within ten (10) Business Days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.5(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (ii).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 3.3, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of a return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders; Tax Documentation. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In

## ATTACHMENT 4

addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (i)(A), (i)(B) and (i)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, executed originals of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit 3.3-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

## ATTACHMENT 4

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit 3.3-2 or Exhibit 3.3-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 3.3-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any indemnified party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes (including the carryover or application of such refund to an amount otherwise due to the refunding Governmental Authority) as to which it has been indemnified pursuant to this Section 3.3

(including by the payment of additional amounts pursuant to this Section 3.3), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.3 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of the indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 3.3 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Term Loan A Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

**Section 3.4** Mitigation Obligations; Designation of a Different Lending Office. If any Lender requests compensation under Section 3.2, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.3, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.2 or Section 3.3, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

#### **Section 4. [INTENTIONALLY OMITTED]**

#### **Section 5. CONDITIONS PRECEDENT**

**Section 5.1** Conditions Precedent to Initial Credit Extensions. The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction of the following conditions on or before the Closing Date:

(a) Executed Credit Documents. Receipt by the Administrative Agent of executed counterparts of this Agreement and the other Credit Documents, in each case, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders and duly executed by the appropriate parties thereto.

(b) Organizational Documents. Receipt by the Administrative Agent of the following:

## ATTACHMENT 4

(i) Charter Documents. Copies of articles of incorporation, certificate of organization or formation, or other like document for the Borrower certified as of a recent date by the appropriate Governmental Authority.

(ii) Organizational Documents Certificate. (A) Copies of bylaws, operating agreement, partnership agreement or like document, (B) copies of resolutions approving the transactions contemplated in connection with the financing and authorizing execution and delivery of the Credit Documents, and (C) incumbency certificates, for or on behalf of the Borrower, certified by an Authorized Officer in form and substance reasonably satisfactory to the Administrative Agent.

(iii) Good Standing Certificate. Copies of certificates of good standing, existence or the like of a recent date for the Borrower from the appropriate Governmental Authority of its jurisdiction of formation or organization.

(iv) Closing Certificate. A certificate from an Authorized Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, confirming, among other things, (A) all consents, approvals, authorizations, registrations, or filings required to be made or obtained by the Borrower, if any, in connection with this Agreement and the other Credit Documents and the transactions contemplated herein and therein have been obtained and are in full force and effect, (B) no investigation or inquiry by any Governmental Authority regarding this Agreement and the other Credit Documents and the transactions contemplated herein and therein is ongoing, (C) since the Borrower Formation Date, there has been no event or circumstance which would be reasonably expected to have a Material Adverse Effect, (D) the Borrower is Solvent after giving effect to the transactions contemplated hereby and the incurrence of Indebtedness related thereto and (E) satisfaction of the condition precedent set forth in clause (h) below (as demonstrated by reasonably detailed calculations set forth in a schedule attached to such certificate).

(c) Opinions of Counsel. Receipt by the Administrative Agent of customary opinions of counsel for the Borrower, including, among other things, opinions regarding the due authorization, execution and delivery of the Credit Documents and the enforceability thereof.

(d) Personal Property Collateral. Receipt by the Collateral Agent of the following:

(i) UCC Financing Statements. Such UCC financing statements necessary or appropriate to perfect the security interests in the personal property collateral, as determined by the Collateral Agent.

(ii) Intellectual Property Filings. Such patent, trademark and copyright notices, filings and recordations necessary or appropriate to perfect the security interests in intellectual property and intellectual property rights, as determined by the Collateral Agent.

(e) Financial Statements. Receipt and satisfactory review by the Administrative Agent (which shall be reasonably conducted) of (i) (A) internally prepared quarterly financial statements of the Sellers that are applicable to the Marina Property for the four fiscal quarters most recently ended, (B) to the extent available to the Borrower, internally prepared annual financial statements of the Sellers that are applicable to the Marina Property for the fiscal year most recently ended, (C) pro forma balance sheet information of the Borrower on the Closing

## ATTACHMENT 4

Date, (D) financial projections prepared by the Borrower on a quarterly basis for the first eight fiscal quarters after the Closing Date and on annual basis thereafter to and including 2021 and (E) such other reasonably available financial information regarding the Borrower or the Marina Property as the Administrative Agent may reasonably request in writing and (ii) quality of earnings reports prepared by a firm (or firms) reasonably acceptable to the Administrative Agent.

(f) Purchase Agreement. The Administrative Agent shall have received copies, in each case certified by an Authorized Officer of the Borrower as being true, complete and correct, of the final purchase agreement (including all schedules and exhibits thereto) regarding the Marina Property (the "Purchase Agreement") and all other material agreements, instruments and documents relating thereto, which shall be in form and substance reasonably satisfactory to the Administrative Agent. The Marina Purchase shall have been consummated (or shall be consummated concurrently with the closing of and/or applicable funding hereunder) in accordance with the terms of the Purchase Agreement and in compliance with applicable law and regulatory approvals.

(g) Equity Contribution. The Administrative Agent shall have received evidence that Safe Harbor Marinas shall have received new cash equity contributions from the Equity Investors (which will be immediately contributed to the Borrower by Safe Harbor Marinas) in exchange for common equity of Safe Harbor Marinas (or other class of equity shall be reasonably satisfactory to the Administrative Agent), in amounts in excess of \$5,000,000.

(h) Consolidated Leverage Ratio. At the time of and after giving effect to the Credit Extensions on the Closing Date and the Marina Purchase occurring on the Closing Date on a Pro Forma Basis, the Consolidated Leverage Ratio shall not exceed 6.0 to 1.0.

(i) Marinas Diligence. With respect to the Marina Property, receipt and satisfactory review by the Administrative Agent (which shall be reasonably conducted) of (v) appraisals satisfying the requirements of Section 7.17, (w) environmental assessments, (x) lease agreements and related documents, (y) title search results and (z) "life of loan" flood determination certificates.

(j) [Intentionally Omitted].

(k) Funding Notice; Funds Disbursement Instructions. The Administrative Agent shall have received (a) a duly executed Funding Notice with respect to the Credit Extension to occur on the Closing Date and (b) duly executed disbursement instructions (with wiring instructions and account information) for all disbursements to be made on the Closing Date.

(l) Evidence of Insurance. Receipt and satisfactory review by the Collateral Agent (which shall be reasonably conducted) of certificates of insurance for casualty, liability and any other insurance required by the Credit Documents, identifying the Collateral Agent as loss payee with respect to the casualty insurance and additional insured with respect to the liability insurance, as appropriate.

(m) Fees and Expenses. The Administrative Agent shall have confirmation that all reasonable and documented out-of-pocket fees and expenses required to be paid on or before the Closing Date have been paid, including the reasonable and documented out-of-pocket fees and expenses of counsel for the Administrative Agent.

## ATTACHMENT 4

For purposes of determining compliance with the conditions specified in this Section 5.1, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

The funding of the initial Loans hereunder shall evidence the satisfaction of the foregoing conditions except to the extent the Borrower has agreed to fulfill conditions following the Closing Date pursuant to Section 7.19 and Section 7.20.

Section 5.2 Conditions to Each Credit Extension. The obligation of each Lender to fund its Term Loan A Commitment Percentage of any Credit Extension on any Credit Date, including the Closing Date, is subject to the satisfaction, or waiver in accordance with Section 11.4, of the following conditions precedent:

(a) the Administrative Agent shall have received a fully executed and delivered Funding Notice, together with the documentation and certifications required therein with respect to each Credit Extension;

(b) after making the Credit Extension requested on such Credit Date, the aggregate outstanding principal amount of the Term Loan A shall not exceed the respective Term Loan A Commitments then in effect;

(c) as of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects (unless any such representation and warranty is subject to a materiality or Material Adverse Effect qualifier, in which case it shall be true and correct in all respects) on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (unless any such representation and warranty is subject to a materiality or Material Adverse Effect qualifier, in which case it shall be true and correct in all respects) on and as of such earlier date;

(d) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default;

(e) [Intentionally Omitted];

(f) in connection with any Credit Extension the proceeds of which shall be used (in whole or in part) to purchase the Marina Property, (i) the conditions precedent in clauses (e)(i), (f) and (i) of Section 5.1 applicable to the Marina Property shall have been satisfied as of such Credit Date with respect to the Marina Property to be acquired on such Credit Date, *mutatis mutandis* and (ii) if the Marina Property being acquired will not be owned in fee by the Borrower but will instead be a Ground Lease, the Ground Lease shall in form and substance reasonably acceptable to the Administrative Agent, including, without limitation, that (A) the Ground Lease shall have a remaining term (including all renewal terms and options) of not less than ten (10) years, (B) no party to such Ground Lease shall be subject to a then continuing bankruptcy or insolvency proceeding or receivership, (C) the Ground Lease (or a related document executed by the applicable ground lessor) shall contain customary provisions as reasonably requested by the Administrative Agent protective of a first mortgage lender to the ground lessee thereunder (it



being understood and agreed that it is reasonable for the Administrative Agent to make such request if (i) a Ground Lease requires ground lessor consent to any leasehold financing or encumbrances, (ii) a Ground Lease prohibits transfer of operation of the applicable Marina Property or (iii) there are conditions, financial or otherwise, to the grant of a leasehold mortgage and (D) the Borrower's interest in the Ground Lease shall not be subordinate to any Lien other than any fee mortgage (so long as the mortgagee under such fee mortgage shall have agreed not to disturb the rights and interests of the Borrower pursuant to a non-disturbance agreement reasonably satisfactory to the Administrative Agent), any Permitted Liens and such other encumbrances that are reasonably acceptable to the Administrative Agent.

## **Section 6. REPRESENTATIONS AND WARRANTIES**

In order to induce Agents and Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, the Borrower represents and warrants to each Agent and Lender on the Closing Date, on each date required by Section 5.2 or as otherwise required hereunder or in any other Credit Document:

Section 6.1 Organization; Requisite Power and Authority; Qualification. The Borrower (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 6.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not be reasonably expected to have, a Material Adverse Effect.

Section 6.2 Equity Interests and Ownership. Schedule 6.2 correctly sets forth the ownership interests in the Borrower as of the Closing Date. The Equity Interests of the Borrower have been duly authorized and validly issued and are fully paid and non-assessable. Except as set forth on Schedule 6.2, as of the Closing Date, there is no existing option, warrant, call, right, commitment, buy-sell, voting trust or other shareholder agreement or other agreement to which the Borrower is a party requiring, and there is no membership interest or other Equity Interests of Borrower outstanding which upon conversion or exchange would require, the issuance by the Borrower of any additional membership interests or other Equity Interests of Borrower or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of the Borrower.

Section 6.3 Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary corporate or similar action on the part of the Borrower.

Section 6.4 No Conflict. The execution, delivery and performance by the Borrower of the Credit Documents and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate in any material respect any provision of any Applicable Laws relating to the Borrower, any of the Organizational Documents of Borrower, or any order, judgment or decree of any court or other agency of government binding on the Borrower; (b) except as would not reasonably be expected to have a Material Adverse Effect, conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any other Contractual Obligations of the Borrower; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of the Borrower (other than any Liens created under any of the Credit Documents in favor of the Collateral Agent for the benefit of the holders of the Obligations) whether now owned or hereafter acquired; or (d) except where such approval or consent is being obtained in connection with the transactions contemplated

hereby or where the failure to obtain such consent or approval would not reasonably be expected to have a Material Adverse Effect, require any approval of stockholders, members or partners or any approval or consent of any Person under any Material Contract of the Borrower.

Section 6.5 Governmental Consents. The execution, delivery and performance by the Borrower of the Credit Documents and the consummation of the transactions contemplated by the Credit Documents do not and will not require, as a condition to the effectiveness thereof, any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority or any other third party except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Collateral Agent for filing and/or recordation, as of the Closing Date and other filings, recordings or consents which have been obtained or made, as applicable, except where the failure to obtain such consent or approval would not reasonably be expected to have a Material Adverse Effect.

Section 6.6 Binding Obligation. Each Credit Document has been duly executed and delivered by the Borrower and is the legally valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, except as may be limited by Debtor Relief Laws or by equitable principles relating to enforceability.

Section 6.7 Financial Statements.

(a) Commencing with the Fiscal Year ending December 31, 2016, the un audited consolidated balance sheet of the Borrower for the most recent Fiscal Year ended, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, including the notes thereto (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower as of the date thereof and its results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) Commencing with the Fiscal Quarter ending June 30, 2016, the unaudited consolidated balance sheet of the Borrower for the most recent Fiscal Quarter ended, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Quarter (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present in all material respects the financial condition of the Borrower as of the date thereof and its results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes, and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower as of the date of such financial statements, including liabilities for taxes, material commitments and Indebtedness.

(c) The projections and the other pro forma financial information delivered to the Administrative Agent prior to the Closing Date are based upon good faith estimates and assumptions believed by management of the Borrower to be accurate and reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein.

Section 6.8 No Material Adverse Effect; No Default.

## ATTACHMENT 4

(a) No Material Adverse Effect. Since the Borrower Formation Date, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

(b) No Default. No Default has occurred and is continuing.

Section 6.9 Tax Matters. The Borrower has filed all federal, state and other material Tax returns and reports required to be filed, and has paid all federal, state and other material Taxes levied or imposed upon it or its properties, assets, income, businesses and franchises otherwise due and payable, except those being actively contested in good faith and by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no tax assessment proposed in writing and received by the Borrower against the Borrower that would, if made, have a Material Adverse Effect.

### Section 6.10 Properties.

(a) Title. The Borrower has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good title to (in the case of all other personal property), all of its material properties and assets reflected in its financial statements and other information referred to in Section 6.7 and in the most recent financial statements delivered pursuant to Section 7.1, in each case except for assets disposed of since the date of such financial statements as permitted under Section 8.10. All such material properties, interests and assets are free and clear of Liens other than Permitted Liens.

(b) Real Estate. As of the Closing Date, Schedule 6.10(b) contains a true, accurate and complete list of all Real Estate Assets of the Borrower.

(c) Intellectual Property. The Borrower owns or is validly licensed to use all Intellectual Property that is necessary for the present conduct of its business, free and clear of Liens (other than Permitted Liens), without conflict with the rights of any other Person unless the failure to own or benefit from such valid license would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the Borrower is not infringing, misappropriating, diluting, or otherwise violating the Intellectual Property rights of any other Person unless such infringement, misappropriation, dilution or violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.11 Environmental Matters. Neither the Borrower nor any of its current Facilities (solely during and with respect to such Person's ownership thereof) or operations, and to its knowledge, no former Facilities (solely during and with respect to the Borrower's ownership thereof), are subject to any outstanding order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; (b) the Borrower has not received any letter or written request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law; (c) there are and, to Borrower's knowledge, have been, no Hazardous Materials Activities which would reasonably be expected to form the basis of an Environmental Claim against the Borrower that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and (d) the Borrower has not filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility (solely during and with respect to the Borrower's ownership

## ATTACHMENT 4

thereof). Compliance with all current requirements pursuant to or under Environmental Laws would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.12 No Defaults. The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations (other than Contractual Obligations relating to Indebtedness), except in each case where the consequences, direct or indirect, of such default or defaults, if any, would not reasonably be expected to have a Material Adverse Effect.

Section 6.13 No Litigation or other Adverse Proceedings. There are no Adverse Proceedings that (a) purport to affect or pertain to this Agreement or any other Credit Document, or any of the transactions contemplated hereby or (b) would reasonably be expected to have a Material Adverse Effect. The Borrower is not subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 6.14 Information Regarding the Borrower. Set forth on Schedule 6.14 is the jurisdiction of organization, the exact legal name (and for the prior five (5) years or since the date of its formation has been) and the true and correct U.S. taxpayer identification number (or foreign equivalent, if any) of the Borrower as of the Closing Date.

### Section 6.15 Governmental Regulation.

(a) The Borrower is not subject to regulation under the Investment Company Act of 1940. The Borrower is not an “investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

(b) The Borrower is not an “enemy” or an “ally of the enemy” within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 *et seq.*), as amended. To its knowledge, the Borrower is not in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. The Borrower (i) is not a blocked person described in Section 1 of the Anti-Terrorism Order or (ii) to the best of its knowledge, does not engage in any dealings or transactions, or is otherwise associated, with any such blocked person.

(c) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower and its directors, officers, employees and agents with applicable Sanctions, and the Borrower and its officers and employees and, to the knowledge of the Borrower, its directors and agents, are in compliance with applicable Sanctions and are not engaged in any activity that would reasonably be expected to result in the Borrower being designated as a Sanctioned Person. None of the Borrower or its Affiliates is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at <http://www.ustreas.gov/offices/enforcement/ofac/> or as otherwise published from time to time.

(d) The Borrower is not or, to the knowledge of the Borrower, any of its directors, officers or employees or any agent of the Borrower or any Affiliate that will act in any capacity in connection with or benefit from any Borrowing (i) is a Sanctioned Person, (ii) has any of its assets located in a Sanctioned Country (unless approved by the Lenders), or (iii) derives any of its

operating income from investments in, or transactions with Sanctioned Persons (unless approved by the Lenders). The proceeds of any Loan or other transaction contemplated by this Agreement or any other Credit Document have not been used (x) in violation of any applicable Sanctions, (y) to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country or (z) in any manner that would result in a violation of applicable Sanctions by any Person (including the Administrative Agent, the Collateral Agent, the Lenders or any other Person participating in the Credit Extensions, whether as an underwriter, advisor, investor or otherwise).

(e) The Borrower and its officers and employees and, to the knowledge of the Borrower, its directors, officers, employees, Affiliates and agents, are in compliance with any applicable Anti-Corruption Laws. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower and its directors, officers, employees and agents with any applicable Anti-Corruption Laws. The Borrower has not made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to the Borrower or to any other Person, in violation of any applicable Anti-Corruption Law. No part of the proceeds of any Loan or other transaction contemplated by this Agreement or any other Credit Document will violate any applicable Anti-Corruption Laws.

(f) To the extent applicable, the Borrower is in compliance with Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (as amended from time to time, the "Patriot Act").

(g) The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of any Credit Extension made to the Borrower will be used (i) to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System as in effect from time to time or (ii) to finance or refinance any (A) commercial paper issued by the Borrower or (B) any other Indebtedness, except for Indebtedness that the Borrower incurred for general corporate or working capital purposes or for capital expenditures.

(h) No Credit Party is an EEA Financial Institution.

Section 6.16 Employee Matters. The Borrower is not engaged in any unfair labor practice that would reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against the Borrower, or to the best knowledge of the Borrower, threatened against it before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against the Borrower or to the best knowledge of the Borrower, threatened against it, (b) no strike or work stoppage in existence or to the knowledge of the Borrower, threatened that involves the Borrower, and (c) to the best knowledge of the Borrower, no union representation question existing with respect to the employees of the Borrower and, to the best knowledge of the Borrower, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as would not reasonably be expected to have a Material Adverse Effect.

## ATTACHMENT 4

Section 6.17 Pension Plans. To the knowledge of the Borrower, except as would not reasonably be expected to have a Material Adverse Effect, (a) the Borrower is in compliance with all material applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations of the Internal Revenue Service or the Department of Labor thereunder with respect to its Pension Plan, and has performed all its obligations under each Pension Plan in all material respects, (b) each Pension Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter or is the subject of a favorable opinion letter from the Internal Revenue Service indicating that such Pension Plan is so qualified and, to the best knowledge of the Borrower, nothing has occurred subsequent to the issuance of such letter which would cause such Pension Plan to lose its tax-qualified status except where such event would not reasonably be expected to result in a Material Adverse Effect, (c) except as would not reasonably be expected to have a Material Adverse Effect, no liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Pension Plan (other than for routine claims and required funding obligations in the ordinary course) or any trust established under Title IV of ERISA has been incurred by the Borrower or any of its ERISA Affiliates, (d) except as would not reasonably be expected to result in liability to the Borrower in excess of \$250,000, no ERISA Event has occurred, and (e) except to the extent required under Section 4980B of the Internal Revenue Code and Section 601 et seq. of ERISA or similar state laws and except as would not reasonably be expected to have a Material Adverse Effect, no Pension Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower.

Section 6.18 Solvency. The Borrower is and, upon the incurrence of any Credit Extension on any date on which this representation and warranty is made, will be, Solvent.

Section 6.19 Compliance with Laws. The Borrower is in compliance with the Patriot Act and OFAC rules and regulations as provided in Section 6.15. The Borrower is in compliance with, except such non-compliance with such other Applicable Laws that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, all other Applicable Laws. The Borrower possesses all certificates, authorities or permits issued by appropriate Governmental Authorities necessary to conduct the business now operated by it and the failure of which to have would reasonably be expected to have a Material Adverse Effect and have not received any written notice of proceedings relating to the revocation or modification of any such certificate, authority or permit the failure of which to have or retain would reasonably be expected to have a Material Adverse Effect.

Section 6.20 Disclosure. No representation or warranty of the Borrower contained in any Credit Document or in any other documents, certificates or written statements furnished to the Lenders by or on behalf of the Borrower for use in connection with the transactions contemplated hereby (other than projections and pro forma financial information contained in such materials) contains any untrue statement of a material fact or omits to state a material fact (known to the Borrower, in the case of any document not furnished by it) necessary in order to make the statements contained herein or therein not misleading in any material manner in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized by the Administrative Agent and the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results and that such differences may be material. There are no facts known to the Borrower (other than matters of a general economic nature) that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to the Lenders.

Section 6.21 Insurance. The properties of the Borrower are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower operates. The insurance coverage of the Borrower as in effect on the Closing Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 6.21.

Section 6.22 Security Agreement. The Security Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the holders of the Obligations, a legal, valid and enforceable security interest in the Collateral identified therein, except to the extent the enforceability thereof may be limited by applicable Debtor Relief Laws affecting creditors' rights generally and by equitable principles of law (regardless of whether enforcement is sought in equity or at law), and the Security Agreement shall create a perfected Lien on, and security interest in, all right, title and interest of the obligors thereunder in such Collateral, in each case prior and superior in right to any other Lien (other than Permitted Liens) (i) with respect to any such Collateral that is a "security" (as such term is defined in the UCC) and is evidenced by a certificate, when such Collateral is delivered to the Collateral Agent with duly executed stock powers with respect thereto, (ii) with respect to any such Collateral that is a "security" (as such term is defined in the UCC) but is not evidenced by a certificate, when UCC financing statements in appropriate form are filed in the appropriate filing offices in the jurisdiction of organization of the pledgor or when "control" (as such term is defined in the UCC) is established by the Collateral Agent over such interests in accordance with the provision of Section 8-106 of the UCC, or any successor provision, and (iii) with respect to any such Collateral that is not a "security" (as such term is defined in the UCC), when UCC financing statements in appropriate form are filed in the appropriate filing offices in the jurisdiction of organization of the pledgor (to the extent such security interest can be perfected by filing under the UCC).

Section 6.23 Mortgages. Each of the Mortgages is effective to create in favor of the Collateral Agent, for the ratable benefit of the holders of the Obligations, a legal, valid and enforceable security interest in the Real Estate Assets identified therein in conformity with Applicable Laws, except to the extent the enforceability thereof may be limited by applicable Debtor Relief Laws affecting creditors' rights generally and by equitable principles of law (regardless of whether enforcement is sought in equity or at law) and, when the Mortgages and UCC financing statements in appropriate form are duly recorded at the location identified in the Mortgages, and recording or similar taxes, if any, are paid, the Mortgages shall constitute a legal, valid and enforceable Lien on, and security interest in, all right, title and interest of the grantors thereunder in such Real Estate Assets, in each case prior and superior in right to any other Lien (other than Permitted Liens).

Section 6.24 Casualty. Since the Borrower Formation Date, neither the businesses nor the properties of the Borrower are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 6.25 [Intentionally Omitted].

Section 6.26 Management Agreements. Schedule 6.26 is an accurate and complete list of all management and material employment agreements in effect on or as of the Closing Date to which the Borrower is a party or is bound.

## Section 7. AFFIRMATIVE COVENANTS

## ATTACHMENT 4

The Borrower covenants and agrees that until the Obligations shall have been paid in full or otherwise satisfied, and the Term Loan A Commitments hereunder shall have expired or been terminated, the Borrower shall perform all covenants in this Section 7.

Section 7.1 Financial Statements and Other Reports. The Borrower will deliver, or will cause to be delivered, to the Administrative Agent (for distribution to the Lenders):

(a) Quarterly Financial Statements for the Borrower. As soon as available, but in any event within forty-five (45) days after the end of each Fiscal Quarter of the Borrower beginning with the Fiscal Quarter ending June 30, 2016 (including the last quarter of each Fiscal Year thereafter, which, for such Fiscal Quarter, shall be a Borrower-prepared draft), the Borrower-prepared unaudited consolidated balance sheets of the Borrower as at the end of such Fiscal Quarter and the related unaudited statements of income, stockholders equity and cash flows of the Borrower for the portion of the Fiscal Year through the end of such Fiscal Quarter, setting forth, commencing with the financial statements for the fourth Fiscal Quarter of fiscal year 2016, in comparative form the figures for the corresponding periods in the previous Fiscal Year, and certified by a Responsible Officer of the Borrower as being fairly stated in all material respects; provided, that the financial statements delivered pursuant to this clause (a) will not be required to include footnotes and will be subject to change from year-end adjustments;

(b) Unaudited Annual Financial Statements for the Borrower. As soon as available, but in any event within one hundred twenty (120) days after the end of each Fiscal Year of the Borrower beginning with the Fiscal Year ending December 31, 2016, a copy of the unaudited consolidated balance sheet of the Borrower as at the end of such Fiscal Year and the related unaudited consolidated statements of income, stockholders equity, and cash flows of the Borrower for such Fiscal Year or partial Fiscal Year, setting forth, commencing with the financial statements for Fiscal Year 2016, in comparative form the figures for the previous Fiscal Year (or with respect to the fiscal period ending December 31, 2016, the corresponding portion of such fiscal period) and certified by a Responsible Officer of the Borrower as being fairly stated in all material respects; provided, that the financial statements delivered pursuant to this clause (b) will not be required to include footnotes;

(c) Compliance Certificate. Together with each delivery of the financial statements pursuant to clauses (a) and (b) of Section 7.1 a duly completed Compliance Certificate;

(d) Annual Budget. Within thirty (30) days after the end of each Fiscal Year, projections for the Borrower for the next succeeding Fiscal Year, on a quarterly basis and for the following Fiscal Year on an annual basis, including a balance sheet, as at the end of each relevant period and for the period commencing at the beginning of the Fiscal Year and ending on the last day of such relevant period, such projections certified by a Responsible Officer of the Borrower as being based on reasonable estimates and assumptions taking into account all facts and information known (or reasonably available to the Borrower) by a Responsible Officer of the Borrower;

(e) Information Regarding Collateral. (a) The Borrower will furnish to the Collateral Agent prior written notice of any change (i) in the Borrower's legal name, (ii) in the Borrower's corporate structure, (iii) in the Borrower's Federal Taxpayer Identification Number or (iv) the Borrower's jurisdiction of formation;

(f) Securities and Exchange Commission Filings. Promptly after the same are filed, copies of all annual, regular, periodic and special reports and registration statements that the



Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, provided that any documents required to be delivered pursuant to this Section 7.1(f) shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website; or (ii) on which such documents are posted on the Borrower's behalf on SyndTrak or another relevant website, if any to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided further that: (x) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (y) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything to the contrary, as to any information contained in materials furnished pursuant to this Section 7.1(f), the Borrower shall not be separately required to furnish such information under Sections 7.1(a) or (b) above or pursuant to any other requirement of this Agreement or any other Credit Document.

(g) Notice of Default and Material Adverse Effect. Promptly upon any Authorized Officer of the Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that written notice has been given to the Borrower with respect thereto; (ii) that any Person has given any written notice to the Borrower or taken any other action with respect to any event or condition set forth in Section 9.1(b), or (iii) the occurrence of any Material Adverse Effect, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, event or condition or change, and what action the Borrower has taken, are taking and propose to take with respect thereto;

(h) ERISA. (i) Promptly upon any Authorized Officer of the Borrower becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action the Borrower or any of its ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC in writing with respect thereto; and (ii) (1) promptly upon reasonable request of the Administrative Agent, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower or any of its ERISA Affiliates with respect to each Pension Plan; and (2) promptly after their receipt, copies of all written notices received by the Borrower or any of its ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event;

(i) Securities and Exchange Commission Investigations. Promptly, and in any event within five (5) Business Days after receipt thereof by the Borrower, copies of each written notice or other correspondence received from the Securities and Exchange Commission (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of the Borrower; and

(j) Other Information. (i) Promptly upon their becoming available, copies of all financial statements, reports, notices and proxy statements sent or made available generally by the Borrower to its security holders acting in such capacity, provided that the Borrower shall not be required to deliver to the Administrative Agent or any Lender the minutes of any meeting of its Board of Directors, and (ii) such other information and data with respect to the Borrower as from

## ATTACHMENT 4

time to time may be reasonably requested in writing by the Administrative Agent or the Required Lenders.

Each notice pursuant to clauses (h) and (i) of this Section 7.1 shall be accompanied by a statement of an Authorized Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 7.1(g) shall describe with particularity any and all provisions of this Agreement and any other Credit Document that have been breached.

Section 7.2 Existence. The Borrower will at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business, except to the extent permitted by Section 8.10 or not constituting an Asset Sale hereunder.

Section 7.3 Payment of Taxes and Claims. The Borrower will pay (a) all federal, state and other material Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon and (b) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (i) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (ii) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim.

Section 7.4 Maintenance of Properties. The Borrower maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of the Borrower and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

Section 7.5 Insurance. The Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, property insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Borrower as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons; provided that the Borrower shall maintain at all times pollution legal liability insurance with coverage amounts equal to or greater than, deductibles no greater than, and otherwise with terms and conditions no less favorable to the Lenders than, the pollution legal liability insurance in effect as of the Closing Date. Without limiting the generality of the foregoing, the Borrower will maintain (a) flood insurance with respect to each Flood Hazard Property, if any, that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) name the Collateral Agent, on behalf of the holders of the Obligations, as an additional insured thereunder as its interests may appear, and (ii) in the case of each property insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to the Collateral Agent, that names the Collateral Agent, on behalf of the holders of the Obligations, as the lender loss payee thereunder and provides for at least thirty (30) days' prior written notice (or such shorter

prior written notice as may be agreed by the Collateral Agent in its reasonable discretion) to the Collateral Agent of any cancellation of such policy.

Section 7.6 Inspections. The Borrower permit representatives and independent contractors of the Administrative Agent, the Collateral Agent and each Lender to visit and inspect any of its properties, to conduct field audits, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, that so long as no Event of Default exists, the Borrower shall not be obligated to pay for more than one (1) such inspection per year and that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance written notice.

Section 7.7 Lenders Meetings. The Borrower will, upon the request of the Administrative Agent or the Required Lenders, participate in a meeting or telephonic conference of the Administrative Agent and the Lenders once during each Fiscal Year, with respect to any in-person meeting, such meeting to be held at the Borrower's corporate offices (or at such other location as may be agreed to by the Borrower and the Administrative Agent) at such time as may be agreed to by the Borrower and the Administrative Agent.

Section 7.8 Compliance with Laws and Material Contracts. The Borrower shall and shall cause all other Persons, if any, on or occupying any Facilities to comply, with (a) the Patriot Act and OFAC rules and regulations, (b) all other Applicable Laws and (c) all Material Contracts, noncompliance with, with respect to clause (b), would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 7.9 Use of Proceeds. The Borrower will use the proceeds of the Credit Extensions (a) to fund the acquisition of the Marina Property; (b) for capital expenditures, working capital purposes and other lawful general corporate, limited partnership or limited liability company purposes; or (c) to pay transaction fees, costs and expenses related to credit facilities established pursuant to this Agreement and the other Credit Documents and the acquisitions of the Marina Property, in each case not in contravention of Applicable Laws or of any Credit Document; provided that in no event shall the proceeds of credit facilities established pursuant to this Agreement be used to acquire assets (or to pay fees and expenses related to assets) that will not constitute Collateral.

Section 7.10 Environmental Matters.

(a) Environmental Disclosure. The Borrower will deliver to the Administrative Agent and the Lenders with reasonable promptness, such documents and information as from time to time may be reasonably requested in writing by the Administrative Agent or any Lender.

(b) Hazardous Materials Activities, Etc. The Borrower shall promptly take any and all actions necessary to (i) cure any violation of applicable Environmental Laws by the Borrower that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) respond to any Environmental Claim against the Borrower and discharge any obligations it may have to any Person thereunder where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 7.11 Real Estate Assets.

## ATTACHMENT 4

(a) In the event that the Borrower acquires a Real Estate Asset on or after the Closing Date (including the Marina Property but excluding any Real Estate Asset that is Excluded Property), then the Borrower, no later than forty-five (45) days (or such longer period as may be agreed in writing by the Collateral Agent) after acquiring such Real Estate Asset shall take all such actions and execute and deliver, or cause to be executed and delivered, all such Mortgages, documents, instruments, agreements, opinions and certificates similar to those described in clause (b) immediately below that the Collateral Agent shall reasonably request in writing to create in favor of the Collateral Agent, for the benefit of the holders of the Obligations, a valid and, subject to any filing and/or recording referred to herein, enforceable Lien on, and security interest in such Real Estate Asset. The Administrative Agent may, in its reasonable judgment, grant extensions of time for compliance or exceptions with the provisions of this Section 7.11 by the Borrower. In addition to the foregoing, the Borrower shall, at the written request of the Required Lenders, deliver, from time to time, to the Administrative Agent such appraisals as are required by Section 7.17.

(b) The Administrative Agent and the Collateral Agent (with copies sufficient for each Lender) shall have received from the Borrower with respect to such Real Estate Asset:

(i) fully executed and notarized Mortgages (or a fully executed and notarized amendment or supplement to an existing Mortgage), in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering such Real Estate Asset (which Mortgage shall be substantially similar to the Mortgage delivered in connection with the Marina Property, but which shall include such changes as may be required by the Collateral Agent in its reasonable discretion to account for local law matters);

(ii) an opinion of counsel (which counsel shall be reasonably satisfactory to the Collateral Agent) in each state in which such Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgages to be recorded in such state and such other matters as the Collateral Agent may reasonably request in writing, in each case in form and substance reasonably satisfactory to the Collateral Agent;

(iii) an ALTA mortgagee title insurance policy (or its equivalent in non-ALTA jurisdictions) or unconditional commitments therefor with respect to the applicable Real Estate Asset (the "Title Policy"), insuring that the Mortgage creates a valid and enforceable first priority mortgage lien on the applicable Real Estate Asset, free and clear of all defects and encumbrances except Permitted Liens, which Title Policy shall (A) be in an amount not less than the market value of such Real Estate Asset (as determined in an appraisal satisfying the requirements of Section 7.17(b)) or in such other lesser amount as is reasonably acceptable to the Collateral Agent, (B) be from a title insurance company reasonably acceptable to the Collateral Agent, (C) include such available endorsements and reinsurance as the Collateral Agent may reasonably require, and (D) otherwise satisfy the reasonable title insurance requirements of the Collateral Agent;

(iv) evidence reasonably satisfactory to the Collateral Agent that the Borrower has paid to the title company all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and that the Borrower or such title company has paid to the applicable Governmental Authorities all recording and stamp taxes (including mortgage recording and intangible taxes)

## ATTACHMENT 4

payable in connection with recording the Mortgage for such Real Estate Asset in the appropriate real estate records;

(v) evidence as to whether the applicable Real Estate Asset is a Flood Hazard Property, and if such Real Estate Asset is a Flood Hazard Property, (i) the Borrower's written acknowledgment of receipt of written notification from the Administrative Agent (A) as to the fact that such Real Estate Asset is a Flood Hazard Property and (B) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (ii) copies of insurance policies or certificates of insurance reasonably satisfactory to the Collateral Agent (which policies shall name the Administrative Agent as lender's loss payee on behalf of the Lenders under a standard mortgagee endorsement), and evidencing flood insurance in an amount equal to the fair market value of such Real Estate Asset or such portion thereof located in a flood zone (including any personal property located therein) or the maximum limit of coverage available through the National Flood Insurance Program with respect to such Real Estate Asset or such portion thereof located in a flood zone and personal property, whichever is greater;

(vi) an ALTA survey of the site constituting the Real Estate Asset; and

(vii) an appraisal of such Real Estate Asset that satisfies the conditions of Section 7.17(b);

(viii) a current rent roll and current operating statement for such Real Estate Asset (and operating statements or other operating history for the prior two (2) years for such Real Estate Asset, to the extent available), and a fully executed copy of each Material Lease with respect to such Real Estate Asset, together with an SNDA from (x) each applicable Tenant under a Material Lease (unless such Material Lease contains subordination language acceptable to the Collateral Agent in its reasonable discretion) and (y) each applicable Tenant under any lease that has been recorded (or will be recorded in connection with its execution) or for which a memorandum of lease has been recorded (or will be recorded in connection with the execution of such lease) (unless such lease contains subordination language and the title insurer insuring the Lien of the Mortgage for such Real Estate Asset is willing to insure such lease as subordinate to the Mortgage), and the Borrower shall use commercially reasonable efforts to obtain an estoppel certificate from each applicable Tenant under a Material Lease, which estoppel certificate will be (i) in the form that such Tenant is required to provide to a lender pursuant to the terms of its lease, or (ii) such other form as is reasonably acceptable to the Collateral Agent;

(ix) reasonable evidence as to the compliance of such Real Estate Asset and the improvements related thereto with applicable material zoning and use requirements (it being understood that an appropriate zoning endorsement to the applicable Title Policy shall be deemed satisfactory evidence of such compliance;

(x) environmental site assessments (which shall include reliance language acceptable to the Collateral Agent in its reasonable discretion, or the Collateral Agent is otherwise provided a reliance letter acceptable to the Collateral Agent in its reasonable discretion) from environmental consultants reasonably acceptable to the Collateral Agent, dated as of a date reasonably acceptable to the Collateral Agent and prepared in accordance with current ASTM standards to satisfy the United States Environmental

## ATTACHMENT 4

Protection Agency's prevailing All Appropriate Inquiries requirements and indicating that, as of such date, no Hazardous Materials or other conditions on, under or with respect to the applicable Real Estate Asset constitute a material violation of any Environmental Laws requiring remediation pursuant to an Environmental Law other than (a) those which have been addressed through remediation completed to the satisfaction of all Governmental Authorities (or such other resolution which has been accepted in writing by either the Collateral Agent or all Governmental Authority(ies) with jurisdiction relating to both the applicable Real Estate Asset and such recognized environmental conditions, and having authority to enforce any Environmental Laws with respect thereto) or (b) those which are conditions that are insurable, upon terms and conditions acceptable to the Administrative Agent, in its reasonable discretion, under the environmental insurance policy maintained by the Borrower;

(xi) a property condition report with respect to such Real Estate Asset in form and substance reasonably acceptable to the Administrative Agent (and which shall include reliance language acceptable to the Collateral Agent in its reasonable discretion, or the Collateral Agent is otherwise provided a reliance letter acceptable to the Collateral Agent in its reasonable discretion);

(xii) evidence of insurance coverage with respect to such Real Estate Asset meeting the requirements set forth herein and establishing the Collateral Agent as loss payee, as required pursuant to the terms hereof;

(xiii) in the case of a Real Estate Asset which constitutes a leasehold interest, evidence that the applicable lease, a memorandum of lease with respect thereto, or other evidence of such lease in form and substance reasonably satisfactory to the Collateral Agent, has been properly recorded in all places to the extent necessary, in the reasonable judgment of the Collateral Agent, so as to enable the Mortgage encumbering such leasehold interest to effectively create a valid and enforceable first priority Lien (subject to Permitted Liens and required landlord consents) on such leasehold interest in favor of the Collateral Agent, together with such estoppels, waivers and/or consents from the ground lessor under such Ground Lease as are reasonably required by the terms thereof or are otherwise reasonably requested in writing by the Administrative Agent;

(xiv) a copy of the management agreement (if any) with a manager with respect to such Real Estate Asset, together with an assignment of such management agreement in form and substance reasonably satisfactory to the Collateral Agent; and

(xv) upon the reasonable written request of the Collateral Agent, other reports and other reasonable information, in form and scope reasonably satisfactory to the Collateral Agent regarding such Real Estate Asset.

### Section 7.12 Pledge of Personal Property Assets.

(a) [Intentionally Omitted].

(b) Personal Property. Except to the extent provided in clause (c) below, the Borrower shall (i) cause all of its owned and leased personal property (other than Excluded Property) to be subject at all times to first priority (subject to any Permitted Lien), perfected Liens in favor of the Collateral Agent, for the benefit of the holders of the Obligations, to secure the Obligations pursuant to the terms and conditions of the Collateral Documents or, with respect to

## ATTACHMENT 4

any such property acquired subsequent to the Closing Date, such other additional security documents as the Collateral Agent shall reasonably request in writing, subject in any case to Permitted Liens and (ii) deliver such other documentation as the Collateral Agent may reasonably request in writing in connection with the foregoing, including, without limitation, appropriate UCC financing statements, certified resolutions and other organizational and authorizing documents of such Person, opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above and the perfection of the Collateral Agent's Liens thereunder) and other items reasonably requested in writing by the Collateral Agent necessary in connection therewith to perfect the security interests therein, all in form, content and scope reasonably satisfactory to the Collateral Agent.

(c) Deposit Account Control Agreements. To the extent that a depository or cash management account (other than an Excluded Account) is maintained with a Person other than Regions Bank, the Borrower shall cause such depository or cash management account to be subject to an account control agreement in form and substance reasonably satisfactory to the Collateral Agent within forty-five days of the date on which the Borrower opens or acquires such account (or such longer period as the Administrative Agent may agree in its sole discretion); provided that no such account control agreement shall be required with respect to any account that has a balance less than \$25,000, in any individual instance, or \$100,000, when taken together with the account balances of all other accounts (other than Excluded Accounts) that are not subject to an account control agreement in form and substance reasonably acceptable to the Collateral Agent.

Section 7.13 Books and Records. The Borrower will keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of the Borrower in conformity with GAAP.

Section 7.14 [Intentionally Omitted].

Section 7.15 [Intentionally Omitted].

Section 7.16 [Intentionally Omitted].

Section 7.17 Appraisals.

(a) With respect to any Real Estate Asset:

(i) upon the written request of the Administrative Agent or the Required Lenders, promptly cause to be delivered to the Administrative Agent the most recent existing appraisal available to the Borrower with respect to such Real Estate Asset (unless such asset constitutes Excluded Property);

(ii) upon the written request of the Administrative Agent or the applicable Lender, to the extent that an appraisal available to the Borrower not previously delivered to the Administrative Agent is required under Law (including without limitation any requirement of any Governmental Authority with regulatory authority over the Administrative Agent or any Lender) applicable to the Administrative Agent or any of the Lenders, or a more recent appraisal with respect to any Real Estate Asset of the Borrower is required under Law (including without limitation any requirement of any

## ATTACHMENT 4

Governmental Authority with regulatory authority over the Administrative Agent or any Lender), promptly cause such appraisal to be delivered to the Administrative Agent;

(iii) upon the occurrence of any Event of Default following the written request of the Administrative Agent or the Required Lenders, promptly cause new appraisals of all or any of the Real Estate Assets of the Borrower to be delivered to the Administrative Agent;

(iv) upon the occurrence of any mandatory prepayment of the Loans pursuant to Section 2.11(c)(ii) with respect to an Asset Sale or Involuntary Disposition of a portion of a Real Estate Asset, promptly cause to be delivered to the Administrative Agent a new appraisal with respect to any remaining Real Estate Asset (excluding any leasehold Real Estate Asset that is Excluded Property) of the Borrower for which a portion of such Real Estate Asset has been sold or otherwise disposed of in a transaction permitted hereunder (it being understood and agreed that the remaining portion of such Real Estate Asset that was not subject to such disposition shall not be included in the calculation of the financial covenant in Section 8.8(a) until the Administrative Agent has received a new appraisal pursuant to this Section 7.17(a)(iv)); and

(v) upon the written request of the Administrative Agent or the Required Lenders, promptly cause to be delivered to the Administrative Agent a new appraisal with respect to any Real Estate Asset (excluding any leasehold Real Estate Asset that is Excluded Property) of the Borrower; provided that the Borrower shall not be required to obtain new appraisals pursuant to this clause (v) if the Administrative Agent has received an appraisal for such Real Estate Asset which satisfies clause (b) below and is dated not more than twelve (12) months prior to the date of request pursuant to this clause (v).

(b) The appraisals referenced in clause (a) above, any appraisal of a Real Estate Asset (including with respect to the Marina Property) or any other asset of the Borrower to be included in the calculation of the financial covenant in Section 8.8(a), any appraisal of a Real Estate Asset required under Section 7.11(b)(vii), any appraisal used for calculation of the Release Value or any other calculation or purpose hereunder shall be provided (or shall have been provided) by an appraiser reasonably acceptable to the Administrative Agent, shall be in form and substance reasonably acceptable to the Administrative Agent and, with respect to appraisals provided pursuant to clause (ii) above, shall be in form and substance sufficient to comply with applicable Law (including without limitation any requirement of any Governmental Authority with regulatory authority over the Administrative Agent or any Lender). Appraisals required pursuant to this Section 7.17 shall be provided at the Borrower's sole expense.

### Section 7.18 Ground Leases.

The Borrower shall, with respect to each Real Estate Asset subject to a Ground Lease:

(a) Make all payments and otherwise perform in all material respects all obligations in respect of each such Ground Lease and keep each such Ground Lease in full force and effect and not allow any such Ground Lease to lapse or be terminated or any rights to renew any such Ground Lease to be forfeited or cancelled, notify the Administrative Agent of any written notice of default received by the Borrower with respect to any such Ground Lease and cooperate with the Administrative Agent in all respects to cure any such default, except, in any case, where the failure to do so would not be reasonably likely to have a Material Adverse Effect.



## ATTACHMENT 4

(b) Without limiting the foregoing, with respect to each Ground Lease related to any Real Estate Asset:

(i) pay when due the rent and other amounts due and payable thereunder (subject to applicable cure or grace periods);

(ii) timely perform (in all material respects) and observe all of the material terms, covenants and conditions required to be performed and observed by it as tenant thereunder (subject to applicable cure or grace periods);

(iii) do all things necessary to preserve and keep unimpaired such Ground Lease and its material rights thereunder;

(iv) not waive, excuse or discharge any of the material obligations of the ground lessor or other obligor thereunder;

(v) diligently and continuously enforce the material obligations of the ground lessor or other obligor thereunder;

(vi) without duplication of clause (i) and (ii) above, not do, permit or suffer any act, event or omission beyond applicable notice and/or cure periods which would permit the applicable ground lessor to terminate or exercise any other material remedy with respect to such Ground Lease;

(vii) cancel, terminate, surrender, or materially modify or amend any of the provisions of any such Ground Lease or agree to any termination, material amendment, or material modification thereof if the effect of such cancellation, termination, surrender, modification, amendment or agreement is to (A) materially shorten the term of such Ground Lease, (B) materially increase the rent payable under such Ground Lease, (C) materially increase the purchase price under any purchase option concerning the property included in and subject to such Ground Lease, (D) materially modify the gross or net leasable area subject to such Ground Lease, (E) materially transfer to the ground lessee any costs and/or expenses previously paid by the ground lessor under such Ground Lease, (F) terminate (or grant the ground lessor additional rights to unilaterally terminate) such Ground Lease, or (G) subordinate the rights of the Borrower under such Ground Lease to any property manager or any other Person, in each case without the prior written consent of the Administrative Agent (which shall not be unreasonably withheld or delayed);

(viii) deliver to the Administrative Agent all written default and other material written notices received by it or sent by it under the applicable Ground Lease;

(ix) upon the Administrative Agent's reasonable written request, provide to Administrative Agent any information or materials relating to such Ground Lease and evidencing the Borrower's due observance and performance of its material obligations thereunder;

(x) not permit or consent to the subordination of such Ground Lease to any mortgage or other leasehold interest of the premises related thereto;

(xi) execute and deliver (to the extent permitted to do so under such Ground Lease), upon the reasonable written request of the Administrative Agent, any documents,

## ATTACHMENT 4

instruments or agreements as may be required to permit the Administrative Agent to cure any default under such Ground Lease;

(xii) provide to Administrative Agent written notice of its intention to exercise any option of renewal or extension rights with respect to such Ground Lease at least thirty (30) days prior to the expiration of the time to exercise such right or option and duly exercise any renewal or extension option with respect to any such Ground Lease (either consistent with such notice or upon the direction of the Administrative Agent) if the failure to so renew or extend would result in the subject Ground Lease having a term less than three years after the Term Loan A Maturity Date; provided, that the Borrower further hereby appoints the Administrative Agent and/or the Collateral Agent its attorney-in-fact, coupled with an interest, to execute and deliver, for and in the name of such Person, all instruments, documents or agreements necessary to extend or renew any such Ground Lease;

(xiii) not treat, in connection with the bankruptcy or other insolvency proceedings of any ground lessor or other obligor, any Ground Lease as terminated, cancelled or surrendered pursuant to the Bankruptcy Code without the Administrative Agent's prior written consent;

(xiv) in connection with the bankruptcy or other insolvency proceedings of any ground lessor or other obligor, ratify the legality, binding effect and enforceability of the applicable Ground Lease as against the Borrower within the applicable time period therefor in such proceedings, notwithstanding any rejection by such ground lessor or trustee, custodian or receiver related thereto;

(xv) provide to the Administrative Agent not less than thirty (30) days prior written notice of the date on which the Borrower shall apply to any court or other governmental authority for authority or permission to reject the applicable Ground Lease in the event that there shall be filed by or against the Borrower any petition, action or proceeding under the Bankruptcy Code or any similar federal or state law; provided, that the Administrative Agent shall have the right, but not the obligation, to serve upon the Borrower within such thirty (30) day period a notice stating that (A) the Administrative Agent demands that the Borrower assume and the assign the relevant Ground Lease to the Administrative Agent subject to and in accordance with the Bankruptcy Code and (B) the Administrative Agent covenants to cure or provide reasonably adequate assurance thereof with respect to all defaults susceptible of being cured by the Administrative Agent and of future performance under the applicable Ground Lease; provided, further, that if the Administrative Agent serves such notice upon the Borrower, the Borrower shall not seek to reject the applicable agreement and shall promptly comply with such demand;

(xvi) permit the Administrative Agent (at its option), during the continuance of any Event of Default, to (i) perform and comply with all obligations under the applicable Ground Lease; (ii) do and take such action as the Administrative Agent deems necessary or desirable to prevent or cure any default by the Borrower under such Ground Lease and (iii) enter in and upon the applicable premises related to such Ground Lease to the extent and as often as the Administrative Agent deems necessary or desirable in order to prevent or cure any default under the applicable Ground Lease;

(xvii) during the continuance of an Event of Default, in the event of any arbitration, court or other adjudicative proceedings under or with respect to any such

## ATTACHMENT 4

Ground Lease, permit the Administrative Agent (at its option) to exercise all right, title and interest of the Borrower in connection with such proceedings; provided, that (i) the Borrower hereby irrevocably appoint the Administrative Agent as its attorney-in-fact (which appointment shall be deemed coupled with an interest) to exercise such right, interest and title and (ii) the Borrower shall bear all costs, fees and expenses related to such proceedings; provided, further, that the Borrower hereby further agrees that the Administrative Agent shall have the right, but not the obligation, to proceed in respect of any claim, suit, action or proceeding relating to the rejection of any of the Ground Leases referenced above by the relevant ground lessor or obligor as a result of bankruptcy or similar proceedings (including, without limitation, the right to file and prosecute all proofs of claims, complaints, notices and other documents in any such bankruptcy case or similar proceeding); and

(xviii) use commercially reasonable efforts to deliver to the Administrative Agent (and, if it has the ability pursuant to the subject Ground Lease, cause the applicable ground lessor under such Ground Lease to deliver to the Administrative Agent) upon written request of the Administrative Agent (but, so long as no Event of Default has occurred and is continuing, not more than one (1) time in any twelve month period) an estoppel certificate from the ground lessor in relation to such Ground Lease in (x) the form required by such Ground Lease or (y) otherwise in form and substance acceptable to the Administrative Agent, in its reasonable discretion, and, in the case of clause (y), setting forth (A) the name of lessee and lessor under the Ground Lease; (B) that such Ground Lease is in full force and effect and has not been modified except to the extent Administrative Agent has received notice of such modification; (C) that no rental and other payments due thereunder are delinquent as of the date of such estoppel; and (D) whether such Person knows of any actual or alleged defaults or events of default under the applicable Ground Lease as of the date of such estoppel;

provided, that (x) each the Borrower agrees to execute and deliver to Administrative Agent, within ten (10) Business Days of any written request therefor, such documents, instruments, agreements, assignments or other conveyances reasonably requested by the Administrative Agent in connection with or in furtherance of any of the provisions set forth above or the rights granted to the Administrative Agent in connection therewith and (y) in each instance in this Section 7.18 where “Administrative Agent” is used, either the Administrative Agent or the Collateral Agent may act to exercise the rights and abilities provided in this Section 7.18.

**Section 7.19 Cash Management.** Within 90 days after the Closing Date, the Borrower shall maintain primary domestic cash management and treasury business with Regions Bank or LegacyTexas Bank, including, without limitation, all deposit accounts, disbursement accounts, investment accounts and lockbox accounts (other than Excluded Accounts), which accounts shall be made subject to an account control agreement in form and substance reasonably acceptable to the Administrative Agent.

**Section 7.20 Post-Closing Matters.** Execute and deliver the documents and complete the actions set forth on Schedule 7.20, in each case within the time limits specified on such schedule.

## **Section 8. NEGATIVE COVENANTS**

The Borrower covenants and agrees that until the Obligations shall have been paid in full or otherwise satisfied, and the Term Loan A Commitments hereunder shall have expired or been terminated, the Borrower shall perform all covenants in this Section 8.

## ATTACHMENT 4

Section 8.1 Indebtedness. The Borrower shall not directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, other than:

- (a) the Obligations;
- (b) unsecured Indebtedness of the Borrower owed to Safe Harbor Marinas in an amount not to exceed \$100,000 at any time outstanding; provided that the terms and conditions, including, without limitation, subordination provisions, of such Indebtedness are reasonably acceptable to the Administrative Agent; and
- (c) unsecured Indebtedness of the Borrower in an aggregate amount not to exceed \$50,000.

Section 8.2 Liens. The Borrower shall not, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any of its property or assets of any kind (including any document or instrument in respect of goods or accounts receivable), whether now owned or hereafter acquired, created or licensed or any income, profits or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar written notice of any Lien with respect to any such property, asset, income, profits or royalties under the UCC of any State or under any similar recording or notice statute or under any Applicable Laws related to intellectual property, except:

- (a) Liens in favor of the Collateral Agent for the benefit of the holders of the Obligations granted pursuant to any Credit Document;
- (b) Liens for Taxes not yet due or for Taxes if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted;
- (c) statutory Liens of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or Section 303(k) or 4068 of ERISA that would constitute an Event of Default under Section 9.1(j)), in each case incurred in the ordinary course of business (i) for amounts not yet overdue, or (ii) for amounts that are overdue and that are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;
- (d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;
- (e) easements, rights-of-way, restrictions, encroachments, covenants and other defects, matters or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of the Borrower, including, without limitation, all Liens shown on any policy of title insurance in favor of the Collateral Agent with respect to any Real Estate Asset;

## ATTACHMENT 4

- (f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;
- (g) [Intentionally Omitted];
- (h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;
- (i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;
- (k) licenses of patents, trademarks and other intellectual property rights granted by the Borrower in the ordinary course of business and not interfering in any respect with the ordinary conduct of the business of the Borrower;
- (l) Liens existing as of the Closing Date and described in Schedule 8.2;
- (m) [Intentionally Omitted];
- (n) [Intentionally Omitted];
- (o) Liens consisting of judgment or judicial attachment liens relating to judgments which do not constitute an Event of Default hereunder;
- (p) licenses (including licenses of Intellectual Property), sublicenses, leases or subleases granted to third parties in the ordinary course of business;
- (q) Liens in favor of collecting banks under Section 4-210 of the UCC;
- (r) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;
- (s) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;
- (t) [Intentionally Omitted];
- (u) [Intentionally Omitted]; and
- (v) Liens not otherwise permitted hereunder securing Indebtedness or other obligations not in excess of \$50,000 in the aggregate at any one time outstanding.

Section 8.3 No Further Negative Pledges. The Borrower shall not enter into any Contractual Obligation (other than this Agreement and the other Credit Documents) that limits the ability of the Borrower to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this Section 8.3 shall not prohibit (i) any Permitted Lien or any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (ii) customary restrictions and conditions contained in any agreement

relating to the disposition of any property or assets permitted under Section 8.10 pending the consummation of such disposition and (iii) customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business.

Section 8.4 Restricted Payments. The Borrower shall not declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

- (a) [Intentionally Omitted];
- (b) the Borrower may declare and make dividend payments or other distributions payable solely in the Equity Interests of such Person;
- (c) the Borrower may declare and make Permitted Tax Distributions;
- (d) [Intentionally Omitted];
- (e) the Borrower may declare and make cash dividend payments or other cash distributions so long as (x) no Default or Event of Default then exists or would result therefrom and (y) after giving effect thereto on a Pro Forma Basis (solely with respect to giving effect to such Restricted Payment), the Borrower shall be in compliance with the financial covenants set forth in clauses (a) and (c) of Section 8.8.

Section 8.5 Burdensome Agreements. The Borrower shall not enter into, or permit to exist, any Contractual Obligation that encumbers or restricts the ability of the Borrower to (i) pay dividends or make any other distributions to Safe Harbor Marinas on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (ii) subject to Section 8.1(b), pay any Indebtedness or other obligation owed to Safe Harbor Marinas, (iii) [intentionally omitted], (iv) sell, lease or transfer any of its property, (v) pledge its property pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (vi) act as the Borrower pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (i)-(iv) above) for (1) this Agreement and the other Credit Documents, (2) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien or (3) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 8.10 pending the consummation of such sale.

Section 8.6 Investments. The Borrower shall not directly or indirectly, make or own any Investment in any Person, including any joint venture and any Subsidiary, except:

- (a) Investments in cash and Cash Equivalents and deposit accounts or securities accounts in connection therewith;
- (b) [Intentionally Omitted];
- (c) [Intentionally Omitted];
- (d) Investments existing on the Closing Date and described on Schedule 8.6;
- (e) [Intentionally Omitted];

## ATTACHMENT 4

- (f) [Intentionally Omitted];
- (g) Investments constituting accounts receivable, trade debt and deposits for the purchase of goods, in each case made in the ordinary course of business;
- (h) [Intentionally Omitted];
- (i) [Intentionally Omitted]; and
- (j) other Investments not listed above and not otherwise prohibited by this Agreement in an aggregate amount outstanding at any time (on a cost basis) not to exceed \$50,000.

Notwithstanding the foregoing, in no event shall the Borrower make any Investment which results in or facilitates in any manner any Restricted Payment not otherwise permitted under the terms of Section 8.4.

**Section 8.7 Use of Proceeds.** The Borrower shall not use the proceeds of any Credit Extension of the Loans except pursuant to Section 7.9. The Borrower shall not use, and the Borrower shall ensure that its directors, officers, employees and agents shall not use, the proceeds of any Credit Extension (i) to refinance any commercial paper, (ii) in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate any applicable Sanctions, Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System as in effect from time to time or any other regulation thereof or to violate the Exchange Act, (iii) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, or (iv) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country.

**Section 8.8 Financial Covenants.** The Borrower shall not:

(a) Consolidated Funded Debt. Beginning with the Fiscal Quarter ending June 30, 2016, permit Consolidated Funded Debt as of the end of any Fiscal Quarter of the Borrower to be greater than the lesser of (i) 55% of the acquisition cost of the Marina Property owned by the Borrower as of such date, and (ii) the aggregate Release Value of the Marina Property and all other assets (A) for which the Administrative Agent has accepted an appraisal satisfying the requirements of Section 7.17(b) and (B) that are subject to (x) with respect to any real property, a Mortgage or capable of being subject to a Mortgage and will become subject to a Mortgage in the time frame specified in Section 7.11 or (y) with respect to any personal property, a Lien in favor of the Collateral Agent pursuant to the Security Agreement.

(b) Consolidated Pre-Distribution Fixed Charge Coverage Ratio. Beginning with the Fiscal Quarter ending June 30, 2016, permit the Consolidated Pre-Distribution Fixed Charge Coverage Ratio as of the end of any Fiscal Quarter of the Borrower to be less than 1.35 to 1.00.

(c) Consolidated Post-Distribution Fixed Charge Coverage Ratio. Beginning with the Fiscal Quarter ending June 30, 2016, permit the Consolidated Post-Distribution Fixed Charge Coverage Ratio as of the end of any Fiscal Quarter of the Borrower to be less than 1.00 to 1.00.

**Section 8.9 Capital Expenditures.** During any period of four Fiscal Quarters, the Borrower shall not permit Consolidated Capital Expenditures (other than Specified Capital Expenditures) to exceed an amount equal to 25% of Consolidated EBITDA for such period (as determined using financial

statements provided to the Administrative Agent and Lenders pursuant to Section 7.1(a) or (b); provided, however, that so long as no Default has occurred and is continuing or would result from such expenditure, any portion of the amount set forth above, if not expended in the period of four Fiscal Quarters for which it is permitted above, may be carried over for expenditure in the next following period of four Fiscal Quarters (excluding any carry forward available from any prior four Fiscal Quarter period); and provided, further, if any such amount is so carried over, it will be deemed used in the applicable subsequent four Fiscal Quarter period before the amount for such subsequent four Fiscal Quarter period above.

Section 8.10 Fundamental Changes; Disposition of Assets; Acquisitions. The Borrower shall not enter into any Acquisition or transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or make any Asset Sale, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory and materials and the acquisition of equipment and capital expenditures in the ordinary course of business, subject to Section 8.9) the business, property or fixed assets of, or Equity Interests or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) [Intentionally Omitted];

(b) Asset Sales the aggregate gross proceeds (including any non-cash proceeds, determined on the basis of face amount in the case of notes or similar consideration and on the basis of fair market value in the case of other non-cash proceeds) of which do not exceed, when aggregated with the gross proceeds of all other Asset Sales made in any Fiscal Year of the Borrower, 20% of the fair market value of the Tangible Assets of the Borrower (measured as of the last day of the Fiscal Quarter ended immediately prior to the date of such determination for which financial statements have been (or are required pursuant to Section 7.1(a) or (b)); provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of the Borrower (or similar governing body)), and (2) no less than seventy-five percent (75%) of such proceeds shall be paid in cash; and

(c) Investments made in accordance with Section 8.6.

Section 8.11 [Intentionally Omitted].

Section 8.12 Sales and Lease-Backs. The Borrower shall not, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Borrower (a) has sold or transferred or is to sell or to transfer to any other Person, or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by the Borrower to any Person in connection with such lease.

Section 8.13 Transactions with Affiliates and Insiders. The Borrower shall not, directly or indirectly, enter into or permit to exist any material transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any officer, director or Affiliate of the Borrower on terms that are less favorable to the Borrower than those that might be obtained at the time from a Person who is not an officer, director or Affiliate of the Borrower; provided, the foregoing restriction shall not apply to (a) normal and reasonable compensation and reimbursement of expenses of officers and directors in the ordinary course of business and (b) transactions pursuant to the Borrower's employee equity incentive plan and other employee benefit plans and arrangements in the ordinary course of business.



## ATTACHMENT 4

Section 8.14 Prepayment of Other Funded Debt. The Borrower shall not:

(a) after the issuance thereof, amend or modify (or permit the amendment or modification of) the terms of any Funded Debt in a manner materially adverse to the interests of the Lenders (including specifically shortening any maturity or average life to maturity or requiring any payment sooner than previously scheduled or increasing the interest rate or fees applicable thereto);

(b) [Intentionally Omitted];

(c) [Intentionally Omitted]; or

(d) except in connection with a refinancing or refunding permitted hereunder, make any voluntary prepayment, redemption, defeasance or acquisition for value of (including by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), or refund, refinance or exchange of, any Funded Debt (other than the Indebtedness under the Credit Documents and, subject to the subordination provisions thereof, Indebtedness permitted under Section 8.1(b)).

Section 8.15 Conduct of Business. From and after the Closing Date, the Borrower shall not engage in any business other than the businesses engaged in by the Borrower on the Closing Date (after giving effect to the consummation of the transactions contemplated under the Purchase Agreement) and businesses that are reasonably similar, related or incidental thereto.

Section 8.16 Fiscal Year; Accounting Practices. The Borrower shall not (a) change its Fiscal Year-end from December 31 or (b) make any material change in accounting policies or reporting practices, except as required by GAAP.

Section 8.17 Amendments to Organizational Agreements/Material Agreements. The Borrower shall not amend or permit any amendments to its Organizational Documents if such amendment would reasonably be expected to be materially adverse to the Lenders or any Agent (it being understood and agreed that any amendment to the Borrower LLC Agreement permitting or enabling a Person other than the Sponsor to control, directly or indirectly, (or to have the ability to control upon the passage of time or the occurrence of some event) the board of directors (or equivalent governing body) of the Borrower will be considered "materially adverse" to the Lenders and Agents). The Borrower shall not amend or permit any amendment to, or terminate or waive any provision of, any Material Contract unless such amendment, termination, or waiver would not have a material adverse effect on the Agents or the Lenders.

Section 8.18 Limitations on Borrower. The Borrower shall not (i) hold any material assets other than the Marina Property and cash, (ii) have any material liabilities other than (A) the liabilities under the Credit Documents and the Purchase Agreement, (B) tax liabilities in the ordinary course of business, (C) loans and advances permitted under Section 8.6, (D) Indebtedness permitted under Section 8.1 and (E) limited liability company, administrative and operating expenses in the ordinary course of business (including obligations under employee benefits plans), (iii) engage in any business other than (A) owning the Marina Property and activities incidental or related thereto or (B) acting as a party to the Credit Documents and pledging its assets to the Collateral Agent, for the benefit of the Lenders, pursuant to the Collateral Documents to which it is a party or (iv) create or permit to exist any Subsidiary or become party to any Acquisition.

Section 8.19 Equity Interests of Borrower. Notwithstanding any other provisions of this Agreement to the contrary, the Borrower will not issue or have outstanding any shares of Equity Interests that constitute Disqualified Equity Interests.

**Section 9. EVENTS OF DEFAULT; REMEDIES; APPLICATION OF FUNDS.**

Section 9.1 Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by the Borrower to pay (i) the principal of any Loan when due, whether at stated maturity, by acceleration or otherwise; or (ii) within three (3) Business Days of when due any interest on any Loan or any fee or any other amount due hereunder; or

(b) [Intentionally Omitted]; or

(c) Breach of Certain Covenants. Failure of the Borrower to perform or comply with any term or condition contained in Section 7.1, Section 7.2, Section 7.5, Section 7.6, Section 7.8, Section 7.9, Section 7.10, Section 7.11, Section 7.12, Section 7.13, Section 7.14 or Section 8; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by the Borrower in any Credit Document or in any statement or certificate at any time given by the Borrower in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. The Borrower shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other Section of this Section 9.1, and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an Authorized Officer of the Borrower becoming aware of such default, or (ii) receipt by the Borrower of written notice from the Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of the Borrower in an involuntary case under the Bankruptcy Code or Debtor Relief Laws now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against the Borrower under the Bankruptcy Code or other Debtor Relief Laws now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Borrower, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of the Borrower for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of the Borrower, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) The Borrower shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or other Debtor Relief Laws now or hereafter in effect, or shall consent in

writing to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent in writing to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or the Borrower shall make any assignment for the benefit of creditors; or (ii) the Borrower shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of the Borrower or any committee thereof shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 9.1(f); or

(h) Judgments and Attachments. (i) Any one or more money judgments, writs or warrants of attachment or similar process involving an aggregate amount at any time in excess of \$100,000 (to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against the Borrower or any of its assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days; or (ii) any non-monetary judgment or order shall be rendered against the Borrower that would reasonably be expected to have a Material Adverse Effect, and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days; or

(i) Dissolution. Any order, judgment or decree shall be entered against the Borrower decreeing the dissolution or split up of the Borrower and such order shall remain undischarged or unstayed for a period in excess of thirty (30) days; or

(j) Pension Plans. There shall occur one or more ERISA Events which individually or in the aggregate results in liability of the Borrower or any of its ERISA Affiliates in excess of \$100,000 during the term hereof and which is not paid by the applicable due date; or

(k) Change of Control. A Change of Control shall occur; or

(l) Invalidity of Credit Documents and Other Documents. At any time after the execution and delivery thereof, (i) this Agreement or any other Credit Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations (other than contingent and indemnified obligations not then due and owing) in accordance with the terms hereof) or shall be declared null and void, or the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, or (ii) the Borrower shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by the Lenders, under any Credit Document.

Section 9.2 Remedies. (1) Upon the occurrence of any Event of Default described in Section 9.1(f) or Section 9.1(g), automatically, and (2) upon the occurrence and during the continuance of any other Event of Default, at the written request of (or with the written consent of) the Required Lenders, upon written notice to the Borrower by the Administrative Agent, (A) the Term Loan A Commitments, if any, of each Lender having such Term Loan A Commitments shall immediately terminate; (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by the Borrower: (I) the unpaid principal amount of and accrued interest on the Loans and (II) all other Obligations; and/or (C) the Administrative Agent may cause the Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents. Notwithstanding anything herein or otherwise to the contrary,

## ATTACHMENT 4

any Event of Default occurring hereunder shall continue to exist (and shall be deemed to be continuing) until such time as such Event of Default has been cured to the reasonable satisfaction of the Required Lenders or waived in writing in accordance with the terms of Section 11.4.

**Section 9.3     Application of Funds.** After the exercise of remedies provided for in Section 9.2 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including without limitation all reasonable out-of-pocket fees, expenses and disbursements of any law firm or other counsel and amounts payable under Section 3.1, Section 3.2 and Section 3.3) payable to the Administrative Agent and the Collateral Agent, in each case in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders including without limitation all reasonable out-of-pocket fees, expenses and disbursements of any law firm or other counsel and amounts payable under Section 3.1, Section 3.2 and Section 3.3), ratably among the Lenders in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations ratably among such parties in proportion to the respective amounts described in this clause Third payable to them; and

Fourth, to (a) payment of that portion of the Obligations constituting unpaid principal of the Loans, (b) payment of breakage, termination or other amounts owing in respect of any Swap Agreement between the Borrower and any Swap Provider, to the extent such Swap Agreement is permitted hereunder and (c) payments of amounts due under any Treasury Management Agreement between the Borrower and any Treasury Management Bank, ratably among such parties in proportion to the respective amounts described in this clause Fourth payable to them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Laws.

Notwithstanding the foregoing, Secured Swap Obligations and Secured Treasury Management Obligations shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Qualifying Swap Bank or Qualifying Treasury Management Bank, as the case may be. Each Qualifying Swap Bank or Qualifying Treasury Management Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Section 10 for itself and its Affiliates as if a “Lender” party hereto.

**Section 9.4     Borrower’s Right to Cure.**

(a) Notwithstanding any provision to the contrary contained in Section 9.1, in the event of any Event of Default under the covenants set forth in Section 8.8 and until the expiration of the tenth (10th) Business Day after the date on which financial statements are required to be delivered with respect to the applicable Fiscal Quarter or Fiscal Year, as applicable, hereunder

(such date, the “Cure Expiration Date”), the Equity Investors may on one or more occasions make a cash equity investment in Safe Harbor Marinas (the cash proceeds of which shall be promptly contributed to the Borrower) and the Borrower may designate any portion of the proceeds thereof as an increase to Consolidated EBITDAR with respect to such applicable quarter (the “Applicable Quarter”); provided that all such proceeds to be so designated (i) are actually received by the Borrower (including through capital contribution of such proceeds to the Borrower) during the period commencing on the last day of the Applicable Quarter and ending on the date that is ten (10) Business Days after the date on which a Compliance Certificate is required to be delivered with respect to the Applicable Quarter hereunder and (ii) the aggregate amount of proceeds that are so designated shall not exceed 100% of the aggregate amount necessary to cure such Event of Default under Section 8.8, for the period ending on the last day of such Applicable Quarter.

(b) Upon receipt by the Borrower of any such designated proceeds (the “Cure Amount”), Consolidated EBITDAR for any period of calculation which includes the Applicable Quarter shall be increased, solely for the purpose of calculating any financial ratio set forth in Section 8.8, by an amount equal to the Cure Amount. The resulting increase to Consolidated EBITDAR from designation of a Cure Amount shall not result in any adjustment to Consolidated EBITDAR or any other financial definition for any purpose under this Agreement other than for purposes of calculating the financial ratios set forth in Section 8.8, and for additional clarification shall not adjust the calculation of Consolidated EBITDA for purposes of determining the Consolidated Leverage Ratio, Consolidated Pre-Distribution Fixed Charge Coverage Ratio or Consolidated Post-Distribution Fixed Charge Coverage Ratio (other than, in either case, for purposes of actual compliance with Section 8.8 as of the end of any applicable period).

(c) If, after giving effect to the foregoing recalculations, the Borrower shall then be in compliance with the requirements of Section 8.8 for the Applicable Quarter, the Borrower shall be deemed to have satisfied the requirements of Section 8.8 for the relevant period with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of Section 8.8 that had occurred shall be deemed cured for this purpose of the Agreement.

(d) The parties hereto agree that (i) during the term of this Agreement, there can be no more than four Fiscal Quarters in which the cure set forth in Section 9.4(a) is made, (ii) the cure rights set forth in Section 9.4(a) cannot be exercised more than two times during any four Fiscal Quarter period, (iii) the cure rights set forth in Section 9.4(a) cannot be exercised in two consecutive Fiscal Quarters and (iv) the cash contributed or received pursuant to such cash equity investment in the Borrower shall be disregarded for any purpose other than increasing Consolidated EBITDAR solely for the purposes of measuring the covenants set forth in Section 8.8 (and for additional clarification shall not affect the calculation of financial ratio-based conditioning or baskets relating to covenants set forth in this Agreement nor shall it being considered cash for purposes of reducing Consolidated Funded Debt in connection with the calculation of Consolidated Funded Debt for purposes of Section 8.8(a)).

## **Section 10. AGENCY**

### **Section 10.1 Appointment and Authority.**

(a) Each of the Lenders hereby irrevocably appoints Regions Bank to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with

such actions and powers as are reasonably incidental thereto. The provisions of this Section 10 are solely for the benefit of the Administrative Agent and the Lenders, and the Borrower shall have no rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Each of the Lenders hereby irrevocably appoints, designates and authorizes the Collateral Agent to take such action on its behalf under the provisions of this Agreement and each Collateral Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any Collateral Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any Collateral Document, the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein or therein, nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any Collateral Document or otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the Collateral Documents with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Collateral Agent shall act on behalf of the Lenders with respect to any Collateral and the Collateral Documents, and the Collateral Agent shall have all of the benefits and immunities (i) provided to the Administrative Agent under the Credit Documents with respect to any acts taken or omissions suffered by the Collateral Agent in connection with any Collateral or the Collateral Documents as fully as if the term “Administrative Agent” as used in such Credit Documents included the Collateral Agent with respect to such acts or omissions, and (ii) as additionally provided herein or in the Collateral Documents with respect to the Collateral Agent.

Section 10.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 10.3 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

## ATTACHMENT 4

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.4 and 9.2) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent in writing by the Borrower or a Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Competitors. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Competitor or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Competitor.

Section 10.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 10.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 10 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 10.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person servicing as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law by notice in writing to the Borrower and such Person remove such Person as the Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.



(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Credit Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 10.6. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section 10.6). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Section 10 and Section 11.2 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Section 10.7 Non-Reliance on Administrative Agent and Other Lenders. Each of the Lenders acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each of the Lenders also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

Section 10.8 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Joint Book Runners, Joint Lead Arrangers, Co-Documentation Agents or Co-Syndication Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

Section 10.9 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders

## ATTACHMENT 4

and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 2.10 and Section 11.2) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 2.10 and Section 11.2).

### Section 10.10 Collateral Matters.

(a) The Lenders irrevocably authorize the Administrative Agent and the Collateral Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held under any Credit Document securing the Obligations (x) upon termination of the commitments under this Agreement and payment in full of all Obligations (other than contingent indemnification obligations), (y) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted under the Credit Documents or consented to in accordance with the terms of this Agreement, or (z) subject to Section 11.4, if approved, authorized or ratified in writing by the Required Lenders; and

(ii) to subordinate any Lien on any property granted to or held under any Credit Document securing the Obligations to the holder of any Lien on such property that is permitted by Section 8.2(m).

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property pursuant to this Section 10.10, in each case in accordance with the authority granted by this Agreement.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by the Borrower in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(c) Anything contained in any of the Credit Documents to the contrary notwithstanding, each of the Borrower, the Administrative Agent, the Collateral Agent and each holder of the Obligations hereby agree that (i) no holder of the Obligations shall have any right individually to realize upon any of the Collateral or to enforce this Agreement, the Term Loan A Notes or any other credit agreement, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the

holders of the Obligations in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent, and (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of the holders of the Obligations (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

(d) No Secured Swap Agreement or Secured Treasury Management Agreement will create (or be deemed to create) in favor of any Qualifying Swap Bank or any Qualifying Treasury Management Bank, respectively that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of the Borrower under the Credit Documents except as expressly provided herein or in the other Credit Documents. By accepting the benefits of the Collateral, each such Qualifying Swap Bank and Qualifying Treasury Management Bank shall be deemed to have appointed the Collateral Agent as its agent and agreed to be bound by the Credit Documents as a holder of the Obligations, subject to the limitations set forth in this clause (d). Furthermore, it is understood and agreed that the Qualifying Swap Bank and Qualifying Treasury Management Banks, in their capacity as such, shall not have any right to notice of any action or to consent to, direct or object to any action hereunder or under any of the other Credit Documents or otherwise in respect of the Collateral (including the release or impairment of any Collateral, or to any notice of or consent to any amendment, waiver or modification of the provisions hereof or of the other Credit Documents) other than in its capacity as a Lender and, in any case, only as expressly provided herein.

## **Section 11. MISCELLANEOUS**

### **Section 11.1 Notices; Effectiveness; Electronic Communications.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices, consents, requests and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Administrative Agent or the Borrower, to the address, telecopier number, electronic mail address or telephone number specified in Appendix B:

(ii) if to any Lender, to the address, telecopier number, electronic mail address or telephone number in its Administrative Questionnaire on file with the Administrative Agent.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next

business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 if such Lender has notified the Administrative Agent and the Borrower that it is incapable of receiving notices under such Section 2 by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, provided that, with respect to clauses (i) and (ii) above, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient

(c) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by written notice to the other parties hereto.

(d) Platform.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Lenders by posting the Communications on Debt Domain, Intralinks, SyndTrak or a substantially similar electronic transmission system (the "Platform").

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of the Borrower pursuant to any Credit Document or the transactions contemplated therein which is

## ATTACHMENT 4

distributed to the Administrative Agent or any Lender by means of electronic communications pursuant to this Section 11.1, including through the Platform.

### Section 11.2 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented out-of-pocket fees, charges and disbursements of counsel for the Administrative Agent) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the reasonable and documented out-of-pocket fees, charges and disbursements of any counsel for the Administrative Agent or any Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Credit Documents, including its rights under this Section 11.2, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), the Collateral Agent (and any sub-agent thereof), each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable out-of-pocket fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the Borrower) other than such Indemnatee or its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower, or any Environmental Liability related in any way to the Borrower, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any Indemnatee is a party thereto, provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee or (y) result from a claim brought by the Borrower against an Indemnatee for breach in bad faith of such Indemnatee’s obligations hereunder or under any other Credit Document, if the Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 11.2(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section 11.2 to be paid by it to the Administrative Agent (or any sub-agent thereof), the Collateral Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay

to the Administrative Agent (or any such sub-agent), the Collateral Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (in each case, determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of this Agreement that provide that their obligations are several in nature, and not joint and several.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Borrower shall not assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section 11.2 shall be payable promptly, but in any event within ten (10) Business Days after written demand therefor (including delivery of copies of applicable invoices, if any).

(f) Survival. The provisions of this Section 11.2 shall survive resignation or replacement of the Administrative Agent, Collateral Agent or any Lender, termination of the commitments hereunder and repayment, satisfaction and discharge of the loans and obligations hereunder.

Section 11.3 Set-Off. If an Event of Default shall have occurred and be continuing and after obtaining the prior written consent of the Administrative Agent, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Credit Document to such Lender or its Affiliates, irrespective of whether or not such Lender or such Affiliate shall have made any demand under this Agreement or any other Credit Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section 11.3 are in addition to other rights and remedies (including other

rights of setoff) that such Lender or its respective Affiliates may have. Each of the Lenders agrees to notify the Borrower and the Administrative Agent promptly in writing after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

#### Section 11.4 Amendments and Waivers.

(a) Required Lenders' Consent. Subject to Section 11.4(b) and Section 11.4(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by the Borrower therefrom, shall in any event be effective without the written concurrence of the Administrative Agent and the Required Lenders; provided that (i) the Administrative Agent may, with the written consent of the Borrower only, amend, modify or supplement this Agreement to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender if such amendment is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof, (ii) each of the Fee Letter and the Pledge Agreement may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (iii) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Term Loan A Commitments and/or Loans of such Lender may not be increased or extended without the consent of such Lender, (iv) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (v) the Required Lenders shall determine whether or not to allow the Borrower to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender except as provided in clause (a)(iii) above) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (i) extend the Term Loan A Maturity Date;
- (ii) waive, reduce or postpone any scheduled repayment (but not prepayment) or alter the required application of any prepayment pursuant to Section 2.12 or the application of funds pursuant to Section 9.3, as applicable;
- (iii) [Intentionally Omitted];
- (iv) reduce the principal of or the rate of interest on any Loan (other than any waiver of the imposition of the Default Rate pursuant to Section 2.9) or any fee or premium payable hereunder; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;
- (v) extend the time for payment of any such interest or fees;

## ATTACHMENT 4

(vi) reduce the principal amount of any Loan;

(vii) amend, modify, terminate or waive any provision of this Section 11.4(b) or Section 11.4(c) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;

(viii) change the percentage of the Total Credit Exposure that is required for the Lenders or any of them to take any action hereunder or amend the definition of "Required Lenders";

(ix) [Intentionally Omitted];

(x) [Intentionally Omitted];

(xi) release all or substantially all of the Collateral, in each case, except as expressly provided in the Credit Documents; or

(xii) consent to the assignment or transfer by the Borrower of any of its rights and obligations under any Credit Document (except pursuant to a transaction permitted hereunder).

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by the Borrower therefrom, shall:

(i) [Intentionally Omitted];

(ii) [Intentionally Omitted];

(iii) [Intentionally Omitted];

(iv) [Intentionally Omitted];

(v) waive any condition set forth in Section 5.2 as to any Credit Extension to be made by Lenders with Term Loan A Commitments without the consent of the Required Lenders; or

(vi) amend, modify, terminate or waive any provision of this Section 11 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent.

(d) Execution of Amendments, etc. The Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 11.4 shall be binding upon the Administrative Agent, each Lender at the time outstanding, each future Lender and, if signed by a Borrower, on such Borrower.

Section 11.5 Successors and Assigns.



## ATTACHMENT 4

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section 11.5, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section 11.5 or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section 11.5 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section 11.5 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Term Loan A Commitments, Loans and obligations hereunder at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's commitments and the loans at the time owing to it (in each case with respect to any credit facility) or contemporaneous assignments to Approved Funds that equal at least to the amounts specified in subsection (b)(i)(B) of this Section 11.5 in the aggregate) or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 11.5, the aggregate amount of the commitment (which for this purpose includes loans and obligations in respect thereof outstanding thereunder) or, if the commitment is not then in effect, the principal outstanding balance of the loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment Agreement with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment Agreement, as of the Trade Date) shall not be less than \$1,000,000 in the case of any assignment in respect of any Term Loan A Commitments and/or Term Loan A, unless each of the Administrative Agent and, so long as no Event of Default shall have occurred and is continuing, the Borrower otherwise consents in writing (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loan A Commitments and Loans assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section 11.5 and, in addition:

## ATTACHMENT 4

(A) the written consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default shall have occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) unfunded commitments under term loan facilities if such assignment is to a Person that is not a Lender with a commitment in respect of such facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) a funded Term Loan A to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment Agreement. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment Agreement, together with a processing and recordation fee in the amount of \$3,500, unless waived, in whole or in part by the Administrative Agent in its discretion. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the written consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Term Loan A Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section 11.5, from and after the effective date specified in each Assignment Agreement, the assignee

thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.16, 2.17 and 11.2 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. The Borrower will execute and deliver on written request, at its own expense, Term Loan A Notes to the assignee evidencing the interests taken by way of assignment hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section 11.5.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in the United States, a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Term Loan A Commitments of, and principal amounts (and stated interest) of the Loans and Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Term Loan A Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.2(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clauses (b) or (c) of Section 11.4 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.1, 3.2 and 3.3 (subject to the requirements and limitations therein, including the requirements under Section 3.3(f) (it being understood that the documentation required under Section 3.3(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 11.5; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.17 and 3.4 as if it were an assignee under paragraph (b) of this Section 11.5; and (B) shall not be entitled to receive any greater payment under Sections 3.2 or 3.3, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such

entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.17 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.3 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.14 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement, or any promissory notes evidencing its interests hereunder, to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Competitors. (i) No assignment or participation shall be made to any Person that was a Competitor as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Competitor for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee that becomes a Competitor after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Competitor"), (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Competitor. Any assignment in violation of this clause (f)(i) shall not be void, but the other provisions of this clause (f) shall apply.

(ii) If any assignment or participation is made to any Competitor without the Borrower's prior written consent in violation of clause (i) above, or if any Person becomes a Competitor after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Competitor and the Administrative Agent, (A) in the case of outstanding Term Loan A held by Competitors, purchase or prepay the Term Loan A by paying the lowest of (x) the principal amount thereof, (y) the amount that such Competitor paid to acquire such Term Loan A and (z) the market price of such Term Loan A, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (B) require such Competitor to assign, without recourse (in accordance with and subject to the restrictions

contained in this Section 11.5), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lowest of (x) the principal amount thereof, (y) the amount that such Competitor paid to acquire such interests, rights and obligations and (z) the market price of such Term Loan A, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Competitors (A) will not (x) have the right to receive information, reports or other materials provided to the Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Credit Document, each Competitor will be deemed to have consented in the same proportion as the Lenders that are not Competitors consented to such matter, and (y) for purposes of voting on any reorganization plan (each, a “Plan”), each Competitor party hereto hereby agrees (1) not to vote on such Plan, (2) if such Competitor does vote on such Plan notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Competitors provided by the Borrower and any updates thereto from time to time (collectively, the “Competitor List”) on the Platform, including that portion of the Platform that is designated for “public side” Lenders and/or (B) provide the Competitor List to each Lender requesting the same.

Section 11.6 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 11.7 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of the Borrower set forth in Section 3.1(c), Section 3.2, Section 3.3, Section 11.2, Section 11.3, and Section 11.10 and the agreements of the Lenders and the Agents set forth in Section 2.14, Section 10.3 and Section 11.2(c) shall survive the payment of the Loans and the termination hereof.

Section 11.8 No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit

Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents, any Swap Agreements or any Treasury Management Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

Section 11.9 Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to the Administrative Agent or the Lenders (or to the Administrative Agent, on behalf of Lenders), or the Administrative Agent, the Collateral Agent or the Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

Section 11.10 Severability. In case any provision in or obligation hereunder or any Term Loan A Note or other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 11.11 Obligations Several; Independent Nature of Lenders' Rights. The obligations of the Lenders hereunder are several and no Lender shall be responsible for the obligations of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and, subject to Section 10.9(d), each Lender shall be entitled to protect and enforce its rights arising under this Agreement and the other Credit Documents and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 11.12 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Section 11.13 Applicable Laws.

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Submission to Jurisdiction. Each party hereto irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of New York sitting in the County of New York and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or

proceeding arising out of or relating to this Agreement or any other Credit Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Credit Document shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any other Credit Document against Borrower or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Credit Document in any court referred to in subsection (b) of this Section 11.13. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 11.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

Section 11.14 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.14.

Section 11.15 Confidentiality. Each of the Administrative Agent, the Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (f) subject to a written agreement containing provisions substantially the same as those of this Section 11.15, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in (including, for purposes hereof, any new lenders invited to join hereunder on an increase in the Loans and Term Loan A Commitments hereunder, whether by exercise of

an accordion, by way of amendment or otherwise), any of its rights or obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower or its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or the credit facilities provided for herein, or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided for herein, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 11.15 or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section 11.15, “Information” means all information received from the Borrower relating to the Borrower or any of its businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 11.15 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Collateral Agent and the Lenders acknowledges that (i) the Information may include material non-public information concerning the Borrower, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with Applicable Law, including United States federal and state securities laws.

Notwithstanding anything to the contrary in the foregoing, the Borrower hereby authorizes each Lender to make mention of its participation in the transactions contemplated by this Agreement and the other Credit Documents in such Lender's marketing and sales materials, printed media, tombstones, or web based materials (such reference may include, without limitation, the identity of the Borrower, the principal amounts of the Loans, the date of the Loans, and the maturity date of the Loans).

Section 11.16 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under Applicable Laws shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the aggregate outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the aggregate outstanding amount of the Loans made hereunder or be refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the



Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by Applicable Laws, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

Section 11.17 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Credit Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means (e.g. “pdf” or “tif” format) shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.18 No Advisory of Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (a)(i) the arranging and other services regarding this Agreement provided by the Administrative Agent, are arm’s-length commercial transactions between the Borrower, on the one hand, and the Administrative Agent, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (b)(i) the Administrative Agent is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary, for the Borrower or any of its Affiliates or any other Person and (ii) the Administrative Agent does not have any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (c) the Administrative Agent and its respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and the Administrative Agent does not have any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, Borrower hereby waives and releases, any claims that it may have against the Administrative Agent with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 11.19 Electronic Execution of Assignments and Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any Assignment Agreement or in any amendment, waiver, modification or consent relating hereto shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Laws, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

## ATTACHMENT 4

Section 11.20 USA PATRIOT Act. Each Lender subject to the Act hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act

Section 11.21 California Judicial Reference. Notwithstanding anything to the contrary contained in this Agreement, if any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Credit Document, (a) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision; provided that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of Section 11.04, the Borrower shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

Section 11.22 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and (b) the effects of any Bail-in Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[Signatures on Following Page(s)]

## ATTACHMENT 4

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

BORROWER:

SHM VENTURA ISLE, LLC

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_

Name:

Title:

## ATTACHMENT 4

ADMINISTRATIVE AGENT  
AND COLLATERAL AGENT:

REGIONS BANK

By: \_\_\_\_\_

Name:

Title:

## ATTACHMENT 4

LENDERS:

REGIONS BANK,  
as a Lender

By: \_\_\_\_\_

Name:

Title:

## ATTACHMENT 4

LEGACYTEXAS BANK,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

## ATTACHMENT 4

BANK SNB,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

## ATTACHMENT 4

TEXAS CAPITAL BANK,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:



## ATTACHMENT 4

FIRST OKLAHOMA BANK,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

## ATTACHMENT 4

WASHINGTON FEDERAL,  
as a Lender

By: \_\_\_\_\_

Name:

Title:

Exhibit 1.1

## Form of Secured Party Designation Notice

Date: \_\_\_\_\_, 20\_\_

To: Regions Bank, as Administrative Agent

Re: Credit Agreement dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, the "Credit Agreement") among SHM Ventura Isle, LLC, a Delaware limited liability company (the "Borrower"), the Lenders from time to time party thereto and Regions Bank, as Administrative Agent and Collateral Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Credit Agreement.

Ladies and Gentlemen:

[Name of Qualifying Treasury Management Bank/Qualifying Swap Bank] (the "Secured Party") hereby notifies you, pursuant to the terms of the Credit Agreement, that the Secured Party meets the requirements of a [Qualifying Treasury Management Bank] [Qualifying Swap Bank] under the terms of the Credit Agreement and is a [Qualifying Treasury Management Bank] [Qualifying Swap Bank] under the Credit Agreement and the other Credit Documents.

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this notice.

A duly authorized officer of the undersigned has executed this notice as of the day and year set forth above.

[\_\_\_\_\_] ,  
as a [Qualifying Treasury Management Bank]  
[Qualifying Swap Bank]

By: \_\_\_\_\_

Name:

Title:

## ATTACHMENT 4

### Exhibit 2.1

#### Form of Funding Notice

Date: \_\_\_\_\_, 20\_\_

To: Regions Bank, as Administrative Agent

Re: Credit Agreement dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, the "Credit Agreement") among SHM Ventura Isle, LLC, a Delaware limited liability company (the "Borrower"), the Lenders from time to time party thereto and Regions Bank, as Administrative Agent and Collateral Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Credit Agreement.

Ladies and Gentlemen:

The undersigned hereby requests a Term Loan A Borrowing:

1. On \_\_\_\_\_, 20\_\_ (which is a Business Day).
2. In the amount of \$\_\_\_\_\_.
3. Comprised of \_\_\_\_\_ (Type of Loan requested).
4. For Adjusted LIBOR Rate Loans: with an Interest Period of \_\_\_\_\_ months.

The Borrower hereby represents and warrants that each of the conditions set forth in Section 5.2 of the Credit Agreement has been satisfied on and as of the date of such Borrowing.

[Signature on Following Page]

## ATTACHMENT 4

SHM VENTURA ISLE, LLC,  
a Delaware limited liability company

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_

Name:

Title:

## ATTACHMENT 4

### Exhibit 2.5

#### [Form of] Term Loan A Note

FOR VALUE RECEIVED, the undersigned (the “Borrower”), hereby promises to pay to \_\_\_\_\_ or its registered assigns (the “Lender”), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Term Loan A from time to time made by the Lender to the Borrower under that certain Credit Agreement dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, the “Credit Agreement”) among the Borrower, the Lenders from time to time party thereto and Regions Bank, as Administrative Agent and Collateral Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Credit Agreement.

The Borrower promises to pay interest on the unpaid principal amount of the Term Loan A from the Closing Date until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Principal Office of the Administrative Agent. If any amount is not paid in full when due, subject to Section 2.9 of the Credit Agreement, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the Default Rate.

This Term Loan A Note is one of the Term Loan A Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Term Loan Note A shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. The Term Loan A made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Term Loan A Note and endorse thereon the date, amount and maturity of its portion of the Term Loan A and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and nonpayment of this Term Loan A Note.

THIS TERM LOAN A NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[Signatures on Following Page(s)]

## ATTACHMENT 4

IN WITNESS WHEREOF, the Borrower has caused this Term Loan A Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

SHM VENTURA ISLE, LLC,  
a Delaware limited liability company

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_

Name:

Title:

## ATTACHMENT 4

### Exhibit 2.8

#### Form of Conversion/Continuation Notice

Date: \_\_\_\_\_, 20\_\_

To: Regions Bank, as Administrative Agent

Re: Credit Agreement dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, the “Credit Agreement”) among SHM Ventura Isle, LLC, a Delaware limited liability company (the “Borrower”), the Lenders from time to time party thereto and Regions Bank, as Administrative Agent and Collateral Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Credit Agreement.

Ladies and Gentlemen:

Pursuant to Section 2.8 of the Credit Agreement, the undersigned hereby requests a conversion or continuation of the Term Loan A:

1. On \_\_\_\_\_, 20\_\_ (which is a Business Day).
2. In the amount of \$\_\_\_\_\_.
3. Comprised of \_\_\_\_\_ (Type of Loan requested).
4. For Adjusted LIBOR Rate Loans: with an Interest Period of \_\_\_\_\_ months.

The Borrower hereby certifies that no Default or Event of Default has occurred and is continuing or would result from any continuation or conversion contemplated hereby.

[Signature on Following Page]



## ATTACHMENT 4

SHM VENTURA ISLE, LLC,  
a Delaware limited liability company

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_

Name:

Title:

## ATTACHMENT 4

### Exhibit 3.3-1

Form of U.S. Tax Compliance Certificate  
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, the "Credit Agreement") among SHM Ventura Isle, LLC, a Delaware limited liability company (the "Borrower"), the Lenders from time to time party thereto and Regions Bank, as Administrative Agent and Collateral Agent.

Pursuant to the provisions of Section 3.3(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Term Loan A Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN-E (or W-8BEN as applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

## ATTACHMENT 4

### Exhibit 3.3-2

Form of U.S. Tax Compliance Certificate  
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, the "Credit Agreement") among SHM Ventura Isle, LLC, a Delaware limited liability company (the "Borrower"), the Lenders from time to time party thereto and Regions Bank, as Administrative Agent and Collateral Agent.

Pursuant to the provisions of Section 3.3(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN-E (or W-8BEN as applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

## ATTACHMENT 4

### Exhibit 3.3-3

Form of U.S. Tax Compliance Certificate  
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, the "Credit Agreement") among SHM Ventura Isle, LLC, a Delaware limited liability company (the "Borrower"), the Lenders from time to time party thereto and Regions Bank, as Administrative Agent and Collateral Agent.

Pursuant to the provisions of Section 3.3(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN-E (or W-8BEN as applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E (or W-8BEN as applicable) from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

## ATTACHMENT 4

### Exhibit 3.3-4

Form of U.S. Tax Compliance Certificate  
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, the "Credit Agreement") among SHM Ventura Isle, LLC, a Delaware limited liability company (the "Borrower"), the Lenders from time to time party thereto and Regions Bank, as Administrative Agent and Collateral Agent.

Pursuant to the provisions of Section 3.3(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Term Loan A Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Term Loan A Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Credit Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN-E (or W-8BEN as applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E (or W-8BEN as applicable) from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

## ATTACHMENT 4

### Exhibit 7.1(c)

#### Form of Compliance Certificate

Financial Statement Date: \_\_\_\_\_, 20\_\_

To: Regions Bank, as Administrative Agent

Re: Credit Agreement dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, the “Credit Agreement”) among SHM Ventura Isle, LLC, a Delaware limited liability company (the “Borrower”), the Lenders from time to time party thereto and Regions Bank, as Administrative Agent and Collateral Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Credit Agreement.

Ladies and Gentlemen:

The undersigned hereby certifies as of the date hereof that [he/she] is the \_\_\_\_\_ of the Borrower, and that, solely in [his/her] capacity as such (and not in any individual capacity), [he/she] is authorized to execute and deliver this certificate (including the schedules attached hereto and made a party hereof, this “Compliance Certificate”) to the Administrative Agent on behalf of the Borrower, and that:

[Use following paragraph 1 for Fiscal Year-end financial statements:]

[1. Attached hereto as Schedule 1 are the year-end unaudited consolidated financial statements required by Section 7.1(b) of the Credit Agreement for the Fiscal Year of the Borrower ended as of the above date. Such financial statements fairly present, in all material respects, the financial condition of the Borrower as at the date indicated and the results of their operations and their cash flows for the period indicated.]

[Use following paragraph 1 for Fiscal Quarter-end financial statements:]

[1. Attached hereto as Schedule 1 are the unaudited consolidated financial statements required by Section 7.1(a) of the Credit Agreement for the Fiscal Quarter of the Borrower ended as of the above date. Such financial statements fairly present, in all material respects, the financial condition of the Borrower as at the date indicated and the results of their operations and their cash flows for the period indicated, subject to changes resulting from normal year-end adjustments.]

2. The undersigned has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made, a detailed review of the transactions and financial condition of the Borrower during the accounting period covered by the attached financial statements.

3. A review of the activities of the Borrower during such fiscal period has been made under the supervision of the undersigned with a view to determining whether a Default or Event of Default exists, and

[select one:]

[to the knowledge of the undersigned during such fiscal period, no Default or Event of Default exists as of the date hereof.]

## ATTACHMENT 4

[or:]

[the following is a list of each Default or Event of Default, the nature and extent thereof and proposed actions with respect thereto:]

4. The financial covenant analyses and calculations for the periods identified therein are set forth on Schedule 2 attached hereto.

5. Set forth on Schedule 3 is a summary of all material changes in GAAP and in the consistent application thereof, unless such change and the effects thereof have been described in a previous Compliance Certificate, the effect on the financial covenants resulting therefrom, and a reconciliation between calculation of the financial covenants before and after giving effect to such changes.

[Signature on Following Page]

## ATTACHMENT 4

IN WITNESS WHEREOF, the undersigned has executed this Compliance Certificate as of \_\_\_\_\_, 20\_\_.

SHM VENTURA ISLE, LLC,  
a Delaware limited liability company

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_

Name:

Title:



## ATTACHMENT 4

### Schedule 1 to Compliance Certificate

For the Fiscal [Quarter] [Year] ending \_\_\_\_\_, 20\_\_\_\_.

Financial Statements

(see attached)

## ATTACHMENT 4

### Schedule 2 to Compliance Certificate

For the Fiscal [Quarter] [Year] ending \_\_\_\_\_, 20\_\_\_\_.

Financial Covenant Calculations

(see attached)

## ATTACHMENT 4

### Schedule 3 to Compliance Certificate

For the Fiscal [Quarter] [Year] ending \_\_\_\_\_, 20\_\_\_\_.

Changes in GAAP

(see attached)

## ATTACHMENT 4

### Exhibit 11.5

#### Form of Assignment Agreement

This Assignment and Assumption (this “Assignment Agreement”) is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the “Assignor”) and [Insert name of Assignee] (the “Assignee”). Capitalized terms used but not defined herein have the meanings provided in the Credit Agreement identified below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment Agreement as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_ [and is an Affiliate/ Approved Fund of [identify Lender]]
3. Borrower: SHM Ventura Isle, LLC, a Delaware limited liability company (the “Borrower”)
4. Administrative Agent: Regions Bank, as the administrative agent under the Credit Agreement
5. Credit Agreement: Credit Agreement dated as of April [\_\_\_], 2016 (as amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, the “Credit Agreement”) among the Borrower, the Lenders from time to time party thereto and Regions Bank, as Administrative Agent and Collateral Agent

## ATTACHMENT 4

6. Assigned Interest:

Aggregate Amount of Term Loan A Commitment/Term Loan A <u>for all Lenders</u>	Amount of Term Loan A Commitment/ Term Loan A <u>Assigned</u>	Percentage Assigned of Term Loan A Commitment/ <u>Term Loan A</u> <sup>1</sup>
\$	\$	%
\$	\$	%
\$	\$	%

7. Effective Date: \_\_\_\_\_ [to be inserted by Administrative Agent and which shall be the effective date of recordation of transfer in the Register therefor]

The terms set forth in this Assignment Agreement are hereby agreed to:

ASSIGNOR:

[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE:

[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Name:  
Title:

---

<sup>1</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

## ATTACHMENT 4

[Consented to and]<sup>1</sup> Accepted:

REGIONS BANK,  
as Administrative Agent

By: \_\_\_\_\_

Name:

Title:

[Consented to:]<sup>2</sup>

SHM VENTURA ISLE, LLC,  
a Delaware limited liability company

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_

Name:

Title:

---

<sup>1</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>2</sup> To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

## ATTACHMENT 4

### Annex 1 to Assignment Agreement

#### STANDARD TERMS AND CONDITIONS

##### 1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it is [not] a Defaulting Lender, (iv) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby and (v) it has reviewed the list of Competitors posted for the Lenders and the Assignee is not a Competitor; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Affiliates or any other Person obligated in respect of any Credit Document or (iv) the performance or observance by the Borrower, any of its Affiliates or any other Person of any of their respective obligations under any Credit Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement, (iii) it has reviewed the list of Competitors posted for the Lenders and it is not a Competitor, (iv) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (v) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (vi) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 7.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment Agreement and to purchase the Assigned Interest, (vii) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment Agreement and to purchase the Assigned Interest, (viii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee and (ix) it is not a Defaulting Lender; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Delivery

## ATTACHMENT 4

of an executed counterpart of a signature page of this Assignment Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment Agreement. This Assignment Agreement shall be governed by, and construed in accordance with, the law of the State of New York.



RECORDING REQUESTED BY AND WHEN  
RECORDED RETURN TO:

Moore & Van Allen PLLC  
100 North Tryon Street, Floor 47  
Charlotte, North Carolina 28202-4003  
Attn: Todd A. Caraway

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
APN: \_\_\_\_\_

**ATTENTION: COUNTY RECORDER -- THIS DEED OF TRUST SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING UNDER SECTION 9502 OF THE CALIFORNIA UNIFORM COMMERCIAL CODE AND COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE LAND DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. ADDITIONALLY THIS DEED OF TRUST IS TO BE FILED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF THE GRANTOR, AS "DEBTOR", AND THE AGENT, AS "SECURED PARTY". THE GRANTOR IS A RECORD OWNER OF AN INTEREST IN THE LAND DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE GRANTOR (DEBTOR) AND THE AGENT (SECURED PARTY) ARE SET FORTH BELOW.**

STATE OF CALIFORNIA

1363 Spinnaker Drive, Ventura, California

COUNTY OF VENTURA

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT  
OF LEASES AND RENTS AND FIXTURE FILING**

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Deed of Trust") is made and entered into as of April \_\_, 2016, from SHM VENTURA ISLE, LLC, a Delaware limited liability company, with an address of c/o Safe Harbor Marinas, LLC, 11226 Indian Trail, Dallas, Texas 75229, Attn: Chief Financial Officer (the "Grantor"), as trustor, to FIRST AMERICAN TITLE INSURANCE CORPORATION, a Nebraska corporation (the "Trustee"), as trustee, whose mailing address is 800 Boylston Street, Suite 2820, Boston, Massachusetts 02199, for the benefit of REGIONS BANK, an Alabama state banking corporation ("Regions Bank"), in its capacity as Collateral Agent for the Lenders (as defined in the Credit Agreement (hereinafter defined)) and any other holder of the Obligations (as defined in the Credit

## ATTACHMENT 5

Agreement), with an address of 1717 McKinney Avenue, Suite 1100, Dallas, TX 75202, Attn: Dan Walker, Vice President (Regions Bank, in such capacity, together with any successors and permitted assigns, the "Agent"), as beneficiary.

### RECITALS:

WHEREAS, the Grantor, as the borrower, has entered into that certain Credit Agreement dated as of April [ ], 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement) among the Grantor, the Lenders from time to time party thereto and the Agent;

WHEREAS, the Grantor is the owner of the leasehold interest in the real property described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Grantor is required to execute and deliver this Deed of Trust pursuant to the Credit Agreement.

### W I T N E S S E T H:

The Grantor, in consideration of the indebtedness herein recited and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has irrevocably granted, released, sold, remised, bargained, assigned, pledged, warranted, mortgaged, transferred and conveyed, and does hereby grant, release, sell, remise, bargain, assign, pledge, warrant, mortgage, transfer and convey to Trustee and Trustee's successors and assigns, in trust, with power of sale, for the benefit of Agent, a continuing security interest in and to, and lien upon, all of the Grantor's right, title and interest in and to the following described land, real property interests, buildings, improvements, fixtures and other collateral:

(a) All leasehold estates, leasehold interests or rights in and to that certain real property situated in Ventura County, California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), under and in accordance with the lease agreement described on Exhibit B attached hereto and incorporated herein by this reference (the "Lease Agreement"), and all rights, benefits, privileges, and interests of Grantor in the Lease Agreement and all modifications, extensions, renewals, and replacements thereof, and all deposits, credits, options, privileges, and rights of Grantor as tenant under the Lease Agreement, together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Grantor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired; and

(b) All of Grantor's right, title and interest in and to buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements"), pursuant to the Lease Agreement or otherwise, and all materials intended for construction, reconstruction, alteration and repair of such Improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid Land, and all fixtures now or hereafter owned by the Grantor and located on or attached to and used in connection with the aforesaid Land and Improvements (collectively, the "Fixtures"), and all articles of personal property now or hereafter owned by the Grantor and attached to or contained in and used in connection with the aforesaid Land and Improvements (including, but not limited to, all furniture, furnishings,

## ATTACHMENT 5

apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment and fixtures and appurtenances thereto), and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Personalty") and all proceeds of the Tangible Personalty, and all appurtenances to the Land (the "Appurtenances") and all proceeds and products of the Land, including casualty and condemnation proceeds (collectively, the "Proceeds") (hereinafter, the Land, the Improvements, the Fixtures, the Tangible Personalty, the Appurtenances and the Proceeds may be collectively referred to as the "Premises").

TO HAVE AND HOLD the same, together with all privileges, hereditaments, easements and appurtenances thereunto belonging, subject to the Permitted Liens, to the Trustee and the Trustee's successors and assigns to secure the Indebtedness (hereinafter defined) and other obligations herein recited; provided that, should (a) the Indebtedness secured hereby be paid in full and should the Grantor discharge its obligations secured hereby and satisfy the obligations in full or (b) the conditions set forth in the Credit Agreement for the release of this Deed of Trust be fully satisfied, the lien and security interest of this Deed of Trust shall cease, terminate and be void and the Agent shall promptly cause a release of this Deed of Trust to be filed in the appropriate office; and until such obligations or conditions are fully satisfied, it shall remain in full force and effect.

And, as additional security for the Indebtedness, subject to the terms of the Lease Agreement, the Grantor hereby irrevocably assigns to the Agent all of Grantor's right, title and interest in and to any security deposits, rents, issues, profits and revenues of the Premises from time to time accruing (the "Rents and Profits") which assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Notwithstanding the foregoing, so long as no Event of Default shall exist, Grantor shall have a license (which license shall terminate automatically and without notice upon the occurrence and during the continuance of an Event of Default) to collect, but not more than thirty (30) days prior to accrual, all Rents and Profits. In the event, however, that Grantor shall cure any such Event of Default, then the license granted under this paragraph shall be reinstated unless and until another Event of Default occurs, at which time the license shall again terminate.

As additional collateral and further security for the Indebtedness, the Grantor does hereby assign to the Agent and grants to the Agent a security interest in all of the right, title and the interest of the Grantor in and to any and all insurance policies and proceeds thereof and any and all leases (including equipment leases), rental agreements, management contracts, franchise agreements, construction contracts, architects' contracts, technical services agreements, or other contracts, licenses and permits to the extent now or hereafter relating solely to the Premises (the "Intangible Personalty") or any part thereof, and the Grantor agrees to execute and deliver to the Agent such additional instruments, in form and substance reasonably satisfactory to the Agent, as may hereafter be reasonably requested by the Agent to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by the Agent to any lease, rental agreement, management contract, franchise agreement, construction contract, technical services agreement or other contract, license or permit, or to impose upon the Agent any obligation with respect thereto. Notwithstanding the foregoing provisions, such assignment and grant of security interest contained herein shall not extend to, and the Intangible Personalty shall not include, any personalty which is now or hereafter held by the Grantor as licensee, lessee or otherwise, to the extent that such personalty is not assignable or capable of being encumbered as a matter of law or under the terms of the license, lease or other agreement applicable thereto (but solely to the extent that any such restriction shall be enforceable under applicable law); provided, however, that the foregoing assignment and grant of security interest shall extend to, and the

## ATTACHMENT 5

Intangible Personalty shall include, any and all proceeds of such personalty to the extent that the assignment or encumbering of such proceeds is not so restricted under the terms of the license, lease or other agreement applicable thereto.

All the Tangible Personalty which comprises a part of the Premises shall, as far as permitted by law, be deemed to be affixed to the aforesaid Land and conveyed therewith. The Grantor hereby grants a security interest in (a) the balance of the Tangible Personalty, (b) the Fixtures, (c) the Rents and Profits and (d) the Intangible Personalty, and this Deed of Trust shall be considered to be a security agreement which creates a security interest in such items for the benefit of the Agent. In that regard, the Grantor grants to the Agent all of the rights and remedies of a secured party under the laws of the state in which the Premises are located.

The Grantor, the Trustee and the Agent covenant, represent and agree as follows:

### ARTICLE I

#### Indebtedness Secured

1.1 Indebtedness. The Agent and the Lenders have established Term Loan A in the amount of Six Million Six Hundred Fifty Thousand and No/100 Dollars (\$6,650,000.00) in favor of the Grantor pursuant to the terms of the Credit Agreement. This Deed of Trust is given to secure the payment and performance by the Grantor of (a) all Obligations and (b) all obligations and liabilities incurred in connection with the collection and enforcement of the Obligations (all of which whether now existing or hereafter arising, collectively, the “Indebtedness”).

1.2 Future Advances. This Deed of Trust is given to secure the Indebtedness, together with any renewals or extensions or modifications thereof upon the same or different terms or at the same or different rate of interest and also to secure all future advances and readvances or other extensions of credit that may subsequently be made to the Grantor by the Lenders under, in connection with, or otherwise with respect to the Indebtedness. Notwithstanding the foregoing, the maximum principal amount of the Indebtedness secured hereunder shall not exceed \$11,900,000.00.

### ARTICLE II

#### Grantor's Covenants, Representations and Agreements

2.1 Title to Property. The Grantor represents and warrants to the Agent (a) that it is seized of a leasehold interest in the Land and the Improvements pursuant to the Lease Agreement and has the right to encumber and convey the same, and such leasehold interest in the Land and Improvements is free and clear of all liens and encumbrances except for Permitted Liens, (b) that it is the owner of the Tangible Personalty free and clear of all liens and encumbrances except for the Permitted Liens and (c) that it will warrant and defend the such leasehold interest in the Land and the Improvements against the claims of all Persons (except for Permitted Liens). As to the balance of the Premises, the Rents and Profits and the Intangible Personalty, the Grantor represents and warrants that it will defend such property against the claims of all Persons subject to the Permitted Liens.

2.2 Additional Documents. The Grantor agrees to execute and deliver to the Agent, concurrently with the execution of this Deed of Trust and upon the reasonable request of the Agent from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby. The Grantor hereby authorizes the Agent to prepare and file such financing statements, fixture filings, renewals thereof, amendments thereof, supplements thereto and

other instruments as the Agent may from time to time deem necessary or appropriate in order to perfect and maintain the security interests granted hereby in accordance with the Uniform Commercial Code as adopted and as in effect in the state in which the Land is located (the “UCC”).

2.3 Insurance Proceeds. Subject to the provisions of the Credit Agreement, the Grantor assigns to the Agent any proceeds which may become due by reason of any material loss, damage to or destruction of the Premises to which the Grantor is entitled, and such proceeds shall be applied as set forth in the Credit Agreement. Notwithstanding the foregoing, subject to the provisions of the Credit Agreement, provided no Event of Default has occurred and is continuing, the Grantor shall have the right to collect any insurance proceeds and to apply such proceeds to the restoration of the Premises. To the extent such proceeds are applied to the repayment of the balance due under the Credit Documents, if such proceeds exceed the balance due under the Indebtedness, any such excess shall be repaid to the Grantor.

2.4 Eminent Domain. Subject to the provisions of the Credit Agreement, the Grantor assigns to the Agent any proceeds or awards which may become due by reason of any condemnation or other taking for public use of the whole or any part of the Premises or any rights appurtenant thereto to which the Grantor is entitled, and such proceeds or awards shall be applied in the same manner the insurance proceeds are applied as set forth in the Credit Agreement. To the extent such proceeds are applied to the repayment of the balance due under the Credit Documents, if such proceeds exceed the balance due under the Indebtedness, any such excess shall be repaid to the Grantor. The Grantor agrees to execute such further assignments and agreements as may be reasonably required by the Agent to assure the effectiveness of this Section. In the event any Governmental Authority shall require or commence any proceedings for the demolition of any buildings or structures comprising a part of the Premises, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Premises, the Grantor shall promptly notify the Agent of such requirements or commencement of proceeding (for demolition, condemnation or other taking). Notwithstanding the foregoing, subject to the provisions of the Credit Agreement, provided no Event of Default has occurred and is continuing, the Grantor shall have the right to collect and retain any such proceeds or awards.

2.5 Releases and Waivers. The Grantor agrees that no release by the Agent of any portion of the Premises, the Rents and Profits or the Intangible Personalty, no subordination of lien, no forbearance on the part of the Agent to collect on any Loan, or any part thereof, no waiver of any right granted or remedy available to the Agent and no action taken or not taken by the Agent shall, except to the extent expressly released, in any way have the effect of releasing the Grantor from full responsibility to the Agent for the complete discharge of each and every of the Grantor’s obligations hereunder.

## 2.6 Security Agreement.

(a) This Deed of Trust is hereby made and declared to be a security agreement, encumbering each and every item of Fixtures, Tangible Personalty and Intangible Personalty. In furtherance thereof, in order to secure the payment of the Indebtedness, Grantor hereby grants to Agent a security interest in all of the Grantor’s right, title and interest in all Fixtures, Tangible Personalty and Intangible Personalty in compliance with the provisions of the UCC. The Grantor hereby authorizes the Agent to file financing statements in any jurisdiction and with any filing office that the Agent may determine, in its sole discretion, is necessary or advisable to perfect the security interests granted herein. Such financing statements may describe or indicate the collateral to the extent a security interest therein is granted hereby, including without limitation the description “All goods of the debtor that are or are to become fixtures located on the Land, whether now owned or hereafter acquired by Debtor and whether now or hereafter located on the Land” or words of similar import. To the extent permitted by applicable law, the remedies for any violation (beyond applicable notice and/or cure periods) of the covenants, terms and condition of the security agreement herein contained shall be (i) as prescribed herein, (ii) as prescribed by

general law or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified under the UCC, all at the Agent's sole election. The Grantor and the Agent agree that the filing of such financing statement(s) in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the Grantor and the Agent that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, to the extent permitted by law, regarded as part of the real estate irrespective of whether (A) any such item is physically attached to the improvements, (B) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (C) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (x) the proceeds of any fire or hazard insurance policy or (y) any award in eminent domain proceedings for a taking or for loss of value or (z) the Grantor's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Premises, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of the Grantor or the Agent as determined by this instrument or impugning the priority of the Agent's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of the Agent in the event any court shall at any time hold with respect to the foregoing (x) or (y) or (z), that notice of the Agent's priority of interest to be effective against a particular class of persons, must be filed in the UCC records, provided, if there is a conflict between the terms of this paragraph and the terms of the Credit Agreement, the Credit Agreement shall govern.

(b) The Grantor warrants that the name and address of the "Debtor" (which is the Grantor), are as set forth in the preamble to this Deed of Trust; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove. Grantor warrants that Grantor's exact legal name is correctly set forth in the preamble of this Deed of Trust.

## 2.7 Leasehold Interests.

The Grantor shall:

(a) Make all payments and otherwise perform in all material respects all obligations in respect of the Lease Agreement and keep the Lease Agreement in full force and effect and not allow the Lease Agreement to lapse or be terminated or any rights to renew the Lease Agreement to be forfeited or cancelled, notify the Agent of any written notice of default received by the Grantor with respect to the Lease Agreement and cooperate with the Agent in all respects to cure any such default, except, in any case, where the failure to do so would not be reasonably likely to have a Material Adverse Effect.

(b) Without limiting the foregoing, with respect to the Lease Agreement:

(i) pay when due the rent and other amounts due and payable thereunder (subject to applicable cure or grace periods);

(ii) timely perform (in all material respects) and observe all of the material terms, covenants and conditions required to be performed and observed by it as tenant thereunder (subject to applicable cure or grace periods);

(iii) do all things necessary to preserve and keep unimpaired the Lease Agreement and its material rights thereunder;

## ATTACHMENT 5

(iv) not waive, excuse or discharge any of the material obligations of the ground lessor or other obligor thereunder;

(v) diligently and continuously enforce the material obligations of the ground lessor or other obligor thereunder;

(vi) without duplication of clause (i) and (ii) above, not do, permit or suffer any act, event or omission beyond applicable notice and/or cure periods which would permit the applicable ground lessor to terminate or exercise any other material remedy with respect to the Lease Agreement;

(vii) cancel, terminate, surrender, or materially modify or amend any of the provisions of the Lease Agreement or agree to any termination, material amendment, or material modification thereof if the effect of such cancellation, termination, surrender, modification, amendment or agreement is to (A) materially shorten the term of the Lease Agreement, (B) materially increase the rent payable under the Lease Agreement, (C) materially increase the purchase price under any purchase option concerning the property included in and subject to the Lease Agreement, (D) materially modify the gross or net leasable area subject to the Lease Agreement, (E) materially transfer to the ground lessee any costs and/or expenses previously paid by the ground lessor under the Lease Agreement, (F) terminate (or grant the ground lessor additional rights to unilaterally terminate) the Lease Agreement, or (G) subordinate the rights of the Grantor under the Lease Agreement to any property manager or any other Person, in each case without the prior written consent of the Agent (which shall not be unreasonably withheld or delayed);

(viii) deliver to the Agent all written default and other material written notices received by it or sent by it under the Lease Agreement;

(ix) upon the Agent's reasonable written request, provide to Agent any information or materials relating to the Lease Agreement and evidencing Grantor's due observance and performance of its material obligations thereunder;

(x) not permit or consent to the subordination of the Lease Agreement to any mortgage or other leasehold interest of the premises related thereto;

(xi) execute and deliver (to the extent permitted to do so under the Lease Agreement), upon the reasonable written request of the Agent, any documents, instruments or agreements as may be required to permit the Agent to cure any default under the Lease Agreement;

(xii) provide to Agent written notice of its intention to exercise any option of renewal or extension rights with respect to the Lease Agreement at least thirty (30) days prior to the expiration of the time to exercise such right or option and duly exercise any renewal or extension option with respect to the Lease Agreement (either consistent with such notice or upon the direction of the Agent) if the failure to so renew or extend would result in the Lease Agreement having a term less than three years after the Revolving Commitment Termination Date; provided, that Grantor further hereby appoints the Agent its attorney-in-fact, coupled with an interest, to execute and deliver, for and in the name of such Person, all instruments, documents or agreements necessary to extend or renew the Lease Agreement;

## ATTACHMENT 5

(xiii) not treat, in connection with the bankruptcy or other insolvency proceedings of any ground lessor or other obligor, the Lease Agreement as terminated, cancelled or surrendered pursuant to the Bankruptcy Code without the Agent's prior written consent;

(xiv) in connection with the bankruptcy or other insolvency proceedings of any ground lessor or other obligor, ratify the legality, binding effect and enforceability of the Lease Agreement as against the Grantor within the applicable time period therefor in such proceedings, notwithstanding any rejection by such ground lessor or trustee, custodian or receiver related thereto;

(xv) provide to the Agent not less than thirty (30) days prior written notice of the date on which the Grantor shall apply to any court or other governmental authority for authority or permission to reject the Lease Agreement in the event that there shall be filed by or against Grantor any petition, action or proceeding under the Bankruptcy Code or any similar federal or state law; provided, that the Agent shall have the right, but not the obligation, to serve upon the Grantor within such thirty (30) day period a notice stating that (A) the Agent demands that Grantor assume and assign the Lease Agreement to the Agent subject to and in accordance with the Bankruptcy Code and (B) the Agent covenants to cure or provide reasonably adequate assurance thereof with respect to all defaults susceptible of being cured by the Agent and of future performance under the Lease Agreement; provided, further, that if the Agent serves such notice upon the Grantor, Grantor shall not seek to reject the Lease Agreement and shall promptly comply with such demand;

(xvi) permit the Agent (at its option), during the continuance of any Event of Default, to (i) perform and comply with all obligations under the Lease Agreement; (ii) do and take such action as the Agent deems necessary or desirable to prevent or cure any default by Grantor under the Lease Agreement and (iii) enter in and upon the applicable premises related to the Lease Agreement to the extent and as often as the Agent deems necessary or desirable in order to prevent or cure any default under the Lease Agreement;

(xvii) during the continuance of an Event of Default, in the event of any arbitration, court or other adjudicative proceedings under or with respect to the Lease Agreement, permit the Agent (at its option) to exercise all right, title and interest of the Grantor in connection with such proceedings; provided, that (i) Grantor hereby irrevocably appoints the Agent as its attorney-in-fact (which appointment shall be deemed coupled with an interest) to exercise such right, interest and title and (ii) the Grantor shall bear all costs, fees and expenses related to such proceedings; provided, further, that Grantor hereby further agrees that the Agent shall have the right, but not the obligation, to proceed in respect of any claim, suit, action or proceeding relating to the rejection of the Lease Agreement referenced above by the relevant ground lessor or obligor as a result of bankruptcy or similar proceedings (including, without limitation, the right to file and prosecute all proofs of claims, complaints, notices and other documents in any such bankruptcy case or similar proceeding); and

(xviii) use commercially reasonable efforts to deliver to the Agent (and, if it has the ability pursuant to the Lease Agreement, cause the ground lessor under the Lease Agreement to deliver to the Agent) upon written request of the Agent (but, so long as no Event of Default has occurred and is continuing, not more than one (1) time in any twelve month period) an estoppel certificate from the ground lessor in relation to the Lease Agreement in (x) the form required by the Lease Agreement or (y) otherwise in form and substance acceptable to the Agent, in its reasonable discretion, and, in the case of clause (y), setting forth (A) the name of lessee and lessor under the Lease Agreement; (B) that the Lease Agreement is in full force and effect and has not



## ATTACHMENT 5

been modified except to the extent Agent has received notice of such modification; (C) that no rental and other payments due thereunder are delinquent as of the date of such estoppel; and (D) whether such Person knows of any actual or alleged defaults or events of default under the Lease Agreement as of the date of such estoppel;

provided, that (x) Grantor hereby agrees to execute and deliver to Agent, within ten (10) Business Days of any written request therefor, such documents, instruments, agreements, assignments or other conveyances reasonably requested by the Agent in connection with or in furtherance of any of the provisions set forth above or the rights granted to the Agent in connection therewith and (y) in each instance in this Section 2.7 where "Agent" is used, either the Administrative Agent or the Collateral Agent may act to exercise the rights and abilities provided in this Section 2.7.

### ARTICLE III

#### Events of Default

An Event of Default shall exist under the terms of this Deed of Trust upon the occurrence and during the continuance of an Event of Default under the terms of the Credit Agreement.

### ARTICLE IV

#### Foreclosure

4.1 Acceleration of Secured Indebtedness; Foreclosure. Upon the occurrence and during the continuance of an Event of Default, the Indebtedness, including all accrued interest, may be accelerated by the Agent in accordance with the terms of the Credit Agreement. Upon such acceleration, the Agent may do any of the following:

(a) Give such notice of Event of Default and of election to cause the Premises (together with the Rents and Profits, Intangible Property and all other property subject to this Deed of Trust) to be sold as may be required by law or as may be necessary to cause the Trustee to exercise the power of sale granted herein. The Trustee shall then record and give such notice of trustee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the property subject to this Deed of Trust at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by the Agent, or by the Grantor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. The Trustee, from time to time, may postpone or continue the sale of all or any portion of the property subject to this Deed of Trust by public declaration at the time and place last appointed for the sale. No other notice of the postponed sale shall be required except as required by applicable law. Upon any sale, the Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, express or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof. Any person, including the Grantor, the Trustee or the Agent, may purchase at the sale.

(b) Commence proceedings for foreclosure of this Deed of Trust in the manner provided by law for the foreclosure of a real property mortgage or deed of trust.

4.2 Proceeds of Sale. The proceeds of any foreclosure sale of the Premises, or any part thereof, will be distributed and applied in accordance with the terms and conditions of the Credit Agreement (subject to any applicable provisions of applicable law).

## ATTACHMENT 5

4.3 Trustee's Fees. If a foreclosure proceeding is commenced by the Trustee but terminated prior to its completion, the Trustee shall be entitled to a reasonable fee in accordance with applicable law.

### ARTICLE V

#### Additional Rights and Remedies of the Agent

5.1 Rights Upon an Event of Default. Upon the occurrence and during the continuance of an Event of Default, the Agent, immediately and without additional notice and without liability therefor to the Grantor, except for gross negligence, willful misconduct or unlawful conduct as determined by a court of competent jurisdiction by final and nonappealable judgment, may do or cause to be done any or all of the following to the extent permitted by applicable law: (a) exercise its right to collect the Rents and Profits; (b) enter into contracts for the completion, repair and maintenance of the Improvements thereon; (c) expend Loan funds and any rents, income and profits derived from the Premises for the payment of any taxes, insurance premiums, assessments and charges for completion, repair and maintenance of the Improvements, preservation of the lien of this Deed of Trust and satisfaction and fulfillment of any liabilities or obligations of the Grantor arising out of or in any way connected with the Premises whether or not such liabilities and obligations in any way affect, or may affect, the lien of this Deed of Trust; (d) take such steps to protect and enforce the specific performance of any covenant, condition or agreement in this Deed of Trust, the Credit Agreement or the other Credit Documents, or to aid the execution of any power herein granted; and (e) generally, supervise, manage, and contract with reference to the Premises as if the Agent were equitable owner of the Premises. Any amounts expended by the Agent pursuant to this Section 5.1, together with interest thereon at the Default Rate, shall be secured hereby. The Grantor also agrees that any of the foregoing rights and remedies of the Agent may be exercised at any time during the continuance of an Event of Default independently of the exercise of any other such rights and remedies, and the Agent may continue to exercise any or all such rights and remedies until the Event(s) of Default are cured, until foreclosure and the conveyance of the Premises to the high bidder or until the Credit Agreement is no longer in effect or the Indebtedness is otherwise satisfied or paid in full, whichever occurs first.

5.2 Appointment of Receiver. Upon the occurrence and during the continuance of an Event of Default, the Agent shall be entitled, to the extent permitted by law, without additional notice and without regard to the adequacy of any security for the Indebtedness secured hereby, whether the same shall then be occupied as a homestead or not, or the solvency of any party bound for its payment, to make application for the appointment of a receiver to take possession of and to operate the Premises, and to collect the rents, issues, profits, and income thereof, all expenses of which shall be added to the Indebtedness and secured hereby. The receiver shall have all the rights and powers provided for under the laws of the state in which the Premises are located, including without limitation, the power to execute leases, and the power to collect the rents, sales proceeds, issues, profits and proceeds of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Grantor, its successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, sales proceeds, issues, proceeds and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. All costs and expenses (including receiver's fees, reasonable attorneys' fees and costs incurred in connection with the appointment of a receiver) shall be secured by this Deed of Trust. Notwithstanding the appointment of any receiver, trustee or other custodian, the Agent shall be entitled to retain possession and control of any cash or other instruments at the time held by or payable or deliverable under the terms of this Deed of Trust to the Agent to the fullest extent permitted by law.

5.3 Waivers. No waiver of any Event of Default shall at any time thereafter be held to be a waiver of any rights of the Agent stated anywhere in this Deed of Trust, the Credit Agreement or any of

## ATTACHMENT 5

the other Credit Documents, nor shall any waiver of a prior Event of Default operate to waive any subsequent Event(s) of Default. All remedies provided in this Deed of Trust, the Credit Agreement or any of the other Credit Documents are cumulative and may, at the election of the Agent, be exercised alternatively, successively, or in any manner and are in addition to any other rights provided by law.

5.4 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, the Grantor or the Grantor's heirs, devisees, representatives, successors or assigns are occupying or using the Premises, or any part thereof, each and all immediately shall become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale, notwithstanding any language herein apparently to the contrary, shall have the sole option to demand possession immediately following the sale or to permit such occupants to remain as tenants at will. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the property (such as an action for forcible detainer) in any court having jurisdiction.

5.5 Marshalling. The Grantor hereby waives, in the event of foreclosure of this Deed of Trust or the enforcement by the Agent of any other rights and remedies hereunder, any right otherwise available in respect to marshalling of assets which secure any Loan and any other indebtedness secured hereby or to require the Agent to pursue its remedies against any other such assets.

5.6 Protection of Premises. If Grantor fails to perform the covenants and agreements contained in this Deed of Trust, the Credit Agreement or any of the other Credit Documents, and such failure continues beyond any applicable grace, notice and cure periods, except in the case of an emergency in which event the Agent may act immediately, then the Agent may take such actions, including, but not limited to, disbursements of such sums, as the Agent in its reasonable discretion deems necessary to protect the Agent's interest in the Premises.

## ARTICLE VI

### General Conditions

6.1 Substitution of Trustee. If, for any reason, the Agent shall elect to substitute for the Trustee herein named (or for any successor to said Trustee), the Agent shall have the right to appoint successor Trustee(s) by duly acknowledged written instruments, and each new Trustee immediately upon recordation of the instrument so appointing him shall become successor in title to the Premises for the uses and purposes of this Deed of Trust, with all the powers, duties and obligations conferred on the Trustee in the same manner and to the same effect as though he were named herein as the Trustee. If more than one Trustee has been appointed, each of such Trustees and each successor thereto shall be and hereby is empowered to act independently.

6.2 Terms. The singular used herein shall be deemed to include the plural; the masculine deemed to include the feminine and neuter; and the named parties deemed to include their heirs, successors and permitted assigns. The term "Agent" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

6.3 Notices. The method and effectiveness of delivery of all notices, requests and other communications which relate to this Deed of Trust shall be governed by the terms of the Credit Agreement.

## ATTACHMENT 5

6.4 Severability. If any provision of this Deed of Trust is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

6.5 Headings. The captions and headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Deed of Trust nor the intent of any provision hereof.

6.6 Conflicting Terms. In the event the terms and conditions of this Deed of Trust conflict with the terms and conditions of the Credit Agreement, the terms and conditions of the Credit Agreement shall control and supersede the provisions of this Deed of Trust with respect to such conflicts.

6.7 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the internal law of the state in which the Premises are located.

6.8 Application of the Foreclosure Law. If any provision in this Deed of Trust shall be inconsistent with any provision of the foreclosure laws of the state in which the Premises are located, the provisions of such laws shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with such laws.

### 6.9 WRITTEN AGREEMENT.

(a) THE RIGHTS AND OBLIGATIONS OF THE GRANTOR AND THE AGENT SHALL BE DETERMINED SOLELY FROM THIS WRITTEN DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS, AND ANY PRIOR ORAL OR WRITTEN AGREEMENTS BETWEEN THE AGENT AND THE GRANTOR CONCERNING THE SUBJECT MATTER HEREOF AND OF THE OTHER CREDIT DOCUMENTS ARE SUPERSEDED BY AND MERGED INTO THIS DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS.

(b) THIS DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS MAY NOT BE VARIED BY ANY ORAL AGREEMENTS OR DISCUSSIONS THAT OCCUR BEFORE, CONTEMPORANEOUSLY WITH, OR SUBSEQUENT TO THE EXECUTION OF THIS DEED OF TRUST OR THE OTHER CREDIT DOCUMENTS.

(c) THIS WRITTEN DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS REPRESENT THE FINAL AGREEMENTS BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

6.10 WAIVER OF JURY TRIAL. THE AGENT AND THE GRANTOR HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THE AGENT AND THE GRANTOR MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEED OF TRUST (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE AGENT AND THE GRANTOR (a) CERTIFY THAT NO REPRESENTATIVE, THE AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGE THAT THEY HAVE BEEN

## ATTACHMENT 5

INDUCED TO ENTER INTO THIS DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

6.11 Request for Notice. The Grantor requests a copy of any statutory notice of default and a copy of any statutory notice of sale hereunder be mailed to the Grantor at the address specified in the introductory paragraph on the first page of this Deed of Trust.

6.12 State Specific Provisions. In the event of any inconsistencies between this Section 6.12 and any of the other terms and provisions of this Deed of Trust, the terms and provisions of this Section 6.12 shall control and be binding.

With respect to the Premises which are located in the State of California, notwithstanding anything contained herein to the contrary:

(a) Foreclosure By Power of Sale. Should the Agent elect to foreclose by exercise of the power of sale herein contained, the Agent shall notify the Trustee and request that the Trustee commence such proceedings.

(i) Upon receipt of such notice from the Agent, the Trustee shall cause to be recorded, published and delivered to the Grantor such Notice of Default and Election to Sell as shall then be required by law and by this Deed of Trust. The Trustee shall, without demand on the Grantor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Premises at the time and place of sale fixed by the Trustee in said Notice of Sale, either as a whole, or in separate lots or parcels or items as the Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. The Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the Premises so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, the Grantor, the Trustee or the Agent, may purchase at such sale and the Grantor hereby covenants to warrant and defend the title of such purchaser or purchasers. In addition, the Agent may credit bid at any such sale an amount up to and including the full amount of the indebtedness under the Credit Documents and hereunder, including without limitation, accrued and unpaid interest, principal, charges, advances made hereunder and the Trustee's fees and expenses.

(ii) After deducting all costs, fees and expenses of the Trustee and of this Deed of Trust, including costs of evidence of title in connection with sale, the Trustee shall apply the proceeds of sale in accordance with the provisions of the Credit Agreement.

(iii) Subject to California Civil Code Section 2924(c) or any successor provision thereto, the Trustee may postpone sale of all or any portion of the Premises by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(b) Personal Property.

(i) Upon the occurrence of an Event of Default, the Agent may proceed in any sequence to exercise its rights hereunder with respect to all or any portion of the Premises and all or any

## ATTACHMENT 5

portion of the personalty in accordance with the provisions of Section 9604 of the California Commercial Code.

(ii) Should the Agent elect to cause any of the Premises which is subject to the California Commercial Code to be disposed of, it may dispose of any part thereof in any manner now or hereafter permitted by the California Uniform Commercial Code, or in accordance with any other remedy provided by applicable law. Any such disposition may be conducted by an employee or agent of the Agent or the Trustee. Any person, including both the Grantor and the Agent, shall be eligible to purchase any part or all of such personalty at such disposition. Any such disposition may be either public or private sale as the Agent may elect, subject to the provisions of applicable law. The Agent shall also have the rights and remedies of a secured party under the California Commercial Code, or otherwise available at law or in equity. In furtherance of the foregoing, it is agreed that the expenses of retaking, holding, preparing for sale, selling or the like shall be borne by the Grantor and shall include the Agent's and the Trustee's attorneys' fees and legal expenses. The Grantor, upon demand of the Agent, shall assemble such personalty and make it available to the Agent at the Premises, a place which is hereby deemed to be reasonably convenient to the Agent and the Grantor. The Agent shall give the Grantor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such personalty or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is sent to the Grantor, in the same manner as provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to the Grantor.

(iii) This Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to the provisions of Division 9 of the California Commercial Code, with respect to those portions of the Premises consisting of goods which are or are to become fixtures relating to the Premises. The Grantor grants to the Agent a security interest in all existing and future goods which are now or in the future become fixtures relating to the Premises and proceeds thereof. The Grantor covenants and agrees that the recording of this Deed of Trust in the real estate records of the county where the Premises are located shall also operate from the date of such filing as a fixture filing in accordance with Section 9501 of the California Commercial Code. Without the prior written consent of the Agent, the Grantor shall not create or suffer to be created pursuant to the California Commercial Code any other security interest in such items, including replacements and additions thereto, other than as permitted pursuant to the terms of the Credit Agreement.

(c) Environmental Defaults and Remedies. In the event that any portion of the Premises is determined to be "environmentally impaired" (as "environmentally impaired" is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as "affected parcel" is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting Agent's or the Trustee's rights and remedies under this Deed of Trust, Agent may elect to exercise its right under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected parcel or portion of the Premises; and (2) exercise (i) the rights and remedies of an unsecured creditor, including reduction of its claim against Grantor to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining Agent's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Grantor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Premises and Grantor knew or should have known of the activity by such lessee, occupant or user which caused or contributed to the release or threatened release. All costs and expenses, including, but not limited to, attorney's fees, incurred by Agent in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Premises is environmentally

## ATTACHMENT 5

impaired, plus interest thereon at the default rate of interest set forth in the Credit Agreement until paid, shall be added to the obligations secured by this Deed of Trust and shall be due and payable to Agent upon its demand made at any time following the conclusion of such action.

(d) Request for Notice. The Grantor requests a copy of any statutory notice of default and a copy of any statutory notice of sale hereunder be mailed to Grantor at the address specified in Section 6.3 of this Deed of Trust.

(e) Grantor's Waivers. The Grantor waives, to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Premises, and (ii) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created.

The Grantor does hereby, to the extent permitted by law: (a) waive notice of acceptance of the guaranty of the Grantor by the Agent and any and all notices and demands of every kind which may be required to be given by any statute, rule or law; (b) omitted; (c) waive any defense, right of set-off or other claim which the Grantor may have against the Agent; (d) waive any and all rights or benefits the Grantor may have under (i) Section 580a of the California Code of Civil Procedure purporting to limit the amount of any deficiency judgment which might be recoverable following the occurrence of a trustee's sale under a deed of trust and any right to a fair value hearing or any fair value limitation or other limitation on liability or a deficiency based upon the fair value of any collateral after a nonjudicial foreclosure of any deed of trust securing the Indebtedness (including without limitation this Deed of Trust), (ii) Section 580b of the California Code of Civil Procedure stating that no deficiency may be recovered on a real property purchase money obligation, (iii) Section 580d of the California Code of Civil Procedure stating that no deficiency may be recovered on a note secured by a deed of trust on real property in case such real property is sold under the power of sale contained in such deed of trust, (iv) Section 726 of the California Code of Civil Procedure stating that there may be but one form of action on an indebtedness secured by real property, (v) California Civil Code Sections 2810, 2819, 2839, 2845, 2849, 2850, 2899, and 3433, and (vi) any other anti-deficiency statute or other similar protections, if such sections, or any of them, have any application hereto or any application to the Grantor; (e) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, notice of acceptance, diligence in collection and any and all formalities which otherwise might be legally required to charge the Grantor with liability; and (f) waive any defense arising as a result of the Agent's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code and any defense based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. The Grantor acknowledges that no representations of any kind whatsoever have been made by the Agent. No modification or waiver of any of the provisions of the guaranty of the Grantor shall be binding upon the Agent except as expressly set forth in a writing duly signed and delivered by the Agent.

(f) Nonforeign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") and Section 18805 of the California Revenue and Taxation Code provide that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the Agent that the withholding of tax will not be required in the event of the disposition of the Premises pursuant to the terms of this Deed of Trust, the Grantor hereby certifies, under penalty of perjury, that:

(i) The Grantor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder; and

## ATTACHMENT 5

(ii) The Grantor's principal place of business is 1363 Spinnaker Drive, Ventura, California 93001.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



## ATTACHMENT 5

IN WITNESS WHEREOF, the Grantor has executed this Deed of Trust as of the above written date.

**GRANTOR:**

SHM VENTURA ISLE, LLC,  
a Delaware limited liability company

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALIFORNIA  
ALL PURPOSE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_, 2015, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis  
of satisfactory evidence to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he executed the same in his authorized capacity, and that by his  
signature on the instrument the person, or the entity upon behalf of which the person acted,  
executed the instrument.

**I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.**

WITNESS my hand and official seal.

Signature \_\_\_\_\_

\_\_\_\_\_

**ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could  
prevent fraudulent attachment of this certificate to another document.**

THIS CERTIFICATE **MUST** BE ATTACHED TO  
THE DOCUMENT DESCRIBED AT RIGHT.

Title of Document Type \_\_\_\_\_  
Number of Pages \_\_\_\_\_ Date of Document \_\_\_\_\_  
Signer(s) Other Than Named Above \_\_\_\_\_  
\_\_\_\_\_

## ATTACHMENT 5

### **Exhibit A**

**[Legal Description to be Attached]**

ATTACHMENT 5

**Exhibit B**

**[Lease Description]**

**[NOTE: NEED TO INCLUDE RECORDING INFORMATION FOR MEMO OF LEASE]**

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this “Agreement”) is entered into as of April [\_\_\_], 2016 among SHM VENTURA ISLE, LLC, a Delaware limited liability company (the “Obligor”), and REGIONS BANK, in its capacity as collateral agent (in such capacity, the “Collateral Agent”) for the holders of the Obligations (as defined below).

RECITALS

WHEREAS, pursuant to the Credit Agreement (as amended, modified, supplemented, increased, extended, restated, refinanced and replaced from time to time, the “Credit Agreement”) dated as of the date hereof among the Obligor, the Lenders identified therein and Regions Bank, as Administrative Agent, Collateral Agent, the Lenders have agreed to make Loans upon the terms and subject to the conditions set forth therein; and

WHEREAS, this Agreement is required by the terms of the Credit Agreement.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

(a) Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement, and the following terms which are defined in the Uniform Commercial Code in effect from time to time in the State of New York except as such terms may be used in connection with the perfection of the Collateral and then the applicable jurisdiction with respect to such affected Collateral shall apply (the “UCC”): Accession, Account, Adverse Claim, As-Extracted Collateral, Chattel Paper, Commercial Tort Claim, Consumer Goods, Deposit Account, Document, Electronic Chattel Paper, Equipment, Farm Products, Financial Asset, Fixtures, General Intangible, Goods, Instrument, Inventory, Investment Company Security, Investment Property, Letter-of-Credit Right, Manufactured Home, Payment Intangibles, Proceeds, Securities Account, Security Entitlement, Security, Software, Supporting Obligation and Tangible Chattel Paper.

(b) In addition, the following terms shall have the meanings set forth below:

“Collateral” has the meaning provided in Section 2 hereof.

“Copyright License” means any written agreement providing for the grant by or to the Obligor of any right under any Copyright.

“Copyrights” means (a) all registered United States copyrights in all Works, now existing or hereafter created or acquired, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Copyright Office, and (b) all renewals thereof.

“Patent License” means any written agreement providing for the grant by or to the Obligor of any right to manufacture, use or sell any invention covered by a Patent.

“Patents” means (a) all letters patent of the United States and all reissues and extensions thereof, and (b) all applications for letters patent of the United States and all divisions, continuations and continuations-in-part thereof.

## ATTACHMENT 6

“Trademark License” means any written agreement providing for the grant by or to the Obligor of any right to use any Trademark.

“Trademarks” means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and the goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, or otherwise and (b) all renewals thereof.

“Work” means any work that is subject to copyright protection pursuant to Title 17 of the United States Code.

2. Grant of Security Interest in the Collateral. To secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Obligations, the Obligor hereby grants to the Collateral Agent, for the benefit of the holders of the Obligations, a continuing security interest in, and a right to set off against, any and all right, title and interest of the Obligor in and to all of the following, whether now owned or existing or owned, acquired, or arising hereafter (collectively, the “Collateral”): (a) all Accounts; (b) all cash and currency; (c) Chattel Paper; (d) those certain Commercial Tort Claims set forth on Schedule 1 hereto; (e) all Copyrights; (f) all Copyright Licenses; (g) all Deposit Accounts; (h) all Documents; (i) all Equipment; (j) all Fixtures; (k) all General Intangibles; (l) all Goods; (m) all Instruments; (n) all Inventory; (o) all Investment Property; (p) all Letter-of-Credit Rights; (q) all Patents; (r) all Payment Intangibles; (s) all Patent Licenses; (t) all Software; (u) all Supporting Obligations; (v) all Trademarks; (w) all Trademark Licenses; (x) all books and records related to any of the foregoing; and (y) all Accessions and all Proceeds of any and all of the foregoing.

Notwithstanding anything to the contrary contained herein, the security interests granted under this Agreement shall not extend to, and shall not include (subject to the proviso in clause (b) below), (a) any Excluded Property or (b) any United States intent-to-use trademark applications to the extent that, and solely during the period in which the grant of a security interest therein would impair the validity or enforceability of or render void or result in the cancellation of, any registration issued as a result of such intent-to-use trademark applications under applicable Law; provided that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege pursuant to 15 U.S.C. Section 1060(a) or any successor provision), such intent-to-use trademark application shall be considered Collateral.

The Obligor and the Collateral Agent, on behalf of the holders of the Obligations, hereby acknowledge and agree that the security interest created hereby in the Collateral (i) constitutes continuing collateral security for all of the Obligations, whether now existing or hereafter arising and (ii) is not to be construed as an assignment of any Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks or Trademark Licenses.

3. Representations and Warranties. The Obligor hereby represents and warrants to the Collateral Agent, for the benefit of the holders of the Obligations, that:

(a) Ownership. The Obligor is the legal and beneficial owner of its Collateral and has the right to pledge, sell, assign or transfer the same.

## ATTACHMENT 6

(b) Security Interest/Priority. This Agreement creates a valid security interest in favor of the Collateral Agent, for the benefit of the holders of the Obligations, in the Collateral of the Obligor and, when properly perfected by filing, shall constitute a valid and perfected, first priority security interest in such Collateral, to the extent such security interest can be perfected by filing under the UCC, free and clear of all Liens except for Permitted Liens. The taking possession by the Collateral Agent of all Instruments constituting Collateral will perfect and establish the first priority of the Collateral Agent's security interest in such Instruments. With respect to any Collateral consisting of a Deposit Account, Security Entitlement or held in a Securities Account, upon execution and delivery by the Obligor, the applicable Securities Intermediary and the Collateral Agent of an agreement granting control to the Collateral Agent over such Collateral, the Collateral Agent shall have a valid and perfected, first priority security interest in such Collateral.

(c) Types of Collateral. None of the Collateral consists of, or is the Proceeds of, As-Extracted Collateral, Consumer Goods, Farm Products, Manufactured Homes or standing timber.

(d) Equipment and Inventory. With respect to any Equipment and/or Inventory of the Obligor, the Obligor has exclusive possession and control of such Equipment and Inventory of the Obligor except for (i) Equipment leased by the Obligor as a lessee or (ii) Equipment or Inventory in transit with common carriers. No Inventory of the Obligor is held by a Person other than the Obligor pursuant to consignment, sale or return, sale on approval or similar arrangement.

(e) [Intentionally Omitted].

(f) [Intentionally Omitted].

(g) Partnership and Limited Liability Company Interests. Except as previously disclosed to the Collateral Agent in writing, none of the Collateral consisting of an interest in a partnership or a limited liability company (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a Security governed by Article 8 of the UCC, (iii) is an Investment Company Security, (iv) is held in a Securities Account or (v) constitutes a Security or a Financial Asset.

(h) Contracts; Agreements; Licenses. The Obligor has no Material Contracts, which are non-assignable by their terms, or as a matter of law, or which prevent the granting of a security interest therein.

(i) Consents; Etc. Except for (i) the filing or recording of UCC financing statements, (ii) the filing of appropriate notices with the United States Patent and Trademark Office and the United States Copyright Office, (iii) obtaining control or possession to perfect the Liens created by this Agreement (to the extent required under Section 4(a) hereof) and (iv) consents, authorizations, filings or other actions which have been obtained or made, no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority and no consent of any other Person (including, without limitation, any stockholder, member or creditor of the Obligor), is required for (A) the grant by the Obligor of the security interest in the Collateral granted hereby or for the execution, delivery or performance of this Agreement by the Obligor, (B) the perfection of such security interest (to the extent such security interest can be perfected by filing under the UCC, the granting of control or possession (to the extent required under Section 4(a) hereof) or by filing an appropriate notice with the United States Patent and Trademark Office or the United States Copyright Office) or (C) the exercise by the Collateral Agent or the holders of the Obligations of the rights and remedies provided for in this Agreement.

## ATTACHMENT 6

(j) Commercial Tort Claims. As of the Closing Date, the Obligor does not have any Commercial Tort Claims seeking damages in excess of \$50,000 other than as set forth on Schedule 1 hereto.

4. Covenants. The Obligor covenants that until all Obligations have been paid in full and the Commitments have terminated, the Obligor shall:

(a) Instruments/Chattel Paper/Control.

(i) If any amount in excess of \$50,000 payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument or Tangible Chattel Paper, or if any property constituting Collateral shall be stored or shipped subject to a Document, ensure that such Instrument, Tangible Chattel Paper or Document is either in the possession of the Obligor at all times or, if requested in writing by the Collateral Agent to perfect its security interest in such Collateral, is promptly delivered to the Collateral Agent duly endorsed in a manner reasonably satisfactory to the Collateral Agent. The Obligor shall ensure that any Collateral consisting of Tangible Chattel Paper is marked with a legend reasonably acceptable to the Collateral Agent indicating the Collateral Agent's security interest in such Tangible Chattel Paper.

(ii) [Intentionally Omitted].

(iii) Execute and deliver all agreements, assignments, instruments or other documents as reasonably requested in writing by the Collateral Agent for the purpose of obtaining and maintaining control with respect to any Collateral consisting of (i) Deposit Accounts, (ii) Investment Property, (ii) Letter-of-Credit Rights and (iii) Electronic Chattel Paper.

(b) Filing of Financing Statements, Notices, etc. The Obligor shall execute and deliver to the Collateral Agent such agreements, assignments or instruments (including affidavits, notices, reaffirmations and amendments and restatements of existing documents, as the Collateral Agent may reasonably request in writing) and do all such other things as the Collateral Agent may reasonably deem necessary or appropriate (i) to assure to the Collateral Agent its security interests hereunder, including (A) such instruments as the Collateral Agent may from time to time reasonably request in writing in order to perfect and maintain the security interests granted hereunder in accordance with the UCC, (B) with regard to Copyrights, a Notice of Grant of Security Interest in Copyrights in the form of Exhibit 4(b)(i), (C) with regard to Patents, a Notice of Grant of Security Interest in Patents for filing with the United States Patent and Trademark Office in the form of Exhibit 4(b)(ii) hereto and (D) with regard to Trademarks, a Notice of Grant of Security Interest in Trademarks for filing with the United States Patent and Trademark Office in the form of Exhibit 4(b)(iii) hereto, (ii) to consummate the transactions contemplated hereby and (iii) to otherwise protect and assure the Collateral Agent of its rights and interests hereunder. Furthermore, the Obligor also hereby irrevocably makes, constitutes and appoints the Collateral Agent, its nominee or any other person whom the Collateral Agent may designate, as the Obligor's attorney in fact with full power and for the limited purpose to sign in the name of the Obligor any financing statements, or amendments and supplements to financing statements, renewal financing statements, notices or any similar documents which in the Collateral Agent's reasonable discretion would be necessary or appropriate in order to perfect and maintain perfection of the security interests granted hereunder, such power, being coupled with an interest, being and remaining irrevocable until all Obligations have been paid in full and the Commitments have terminated. The Obligor hereby agrees that a carbon, photographic or other reproduction of this Agreement or any such financing statement is sufficient for filing as a



## ATTACHMENT 6

financing statement by the Collateral Agent without notice thereof to the Obligor wherever the Collateral Agent may in its sole discretion desire to file the same.

(c) Collateral Held by Warehouseman, Bailee, etc. If any Collateral with a value in excess of \$50,000 is at any time in the possession or control of a warehouseman, bailee or any agent or processor of the Obligor and the Collateral Agent so requests in writing, the Obligor shall (i) notify such Person in writing of the Collateral Agent's security interest therein, (ii) instruct such Person to hold all such Collateral for the Collateral Agent's account and subject to the Collateral Agent's instructions and (iii) use commercially reasonable efforts to obtain a written acknowledgment from such Person that it is holding such Collateral for the benefit of the Collateral Agent.

(d) Commercial Tort Claims. (i) Promptly forward to the Collateral Agent an updated Schedule 1 listing any and all Commercial Tort Claims by or in favor of the Obligor seeking damages in excess of \$50,000 and (ii) execute and deliver such statements, documents and notices and do and cause to be done all such things as may be reasonably required by the Collateral Agent, or required by Law to create, preserve, perfect and maintain the Collateral Agent's security interest in any Commercial Tort Claims initiated by or in favor of the Obligor.

(e) Books and Records. Mark its books and records to reflect the security interest granted pursuant to this Agreement.

(f) Nature of Collateral. At all times maintain the Collateral as personal property and not affix any of the Collateral to any real property in a manner which would change its nature from personal property to real property or a Fixture to real property, unless the Collateral Agent shall have a perfected Lien on such Fixture or real property.

(g) Issuance or Acquisition of Equity Interests in Partnership or Limited Liability Company. Not without executing and delivering, or causing to be executed and delivered, to the Collateral Agent such agreements, documents and instruments as the Collateral Agent may reasonably require, issue or acquire any Equity Interests consisting of an interest in a partnership or a limited liability company that (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a Security governed by Article 8 of the UCC, (iii) is an Investment Company Security, (iv) is held in a Securities Account or (v) constitutes a Security or a Financial Asset.

5. Authorization to File Financing Statements. The Obligor hereby authorizes the Collateral Agent to prepare and file such financing statements (including continuation statements) or amendments thereof or supplements thereto or other instruments as the Collateral Agent may from time to time deem reasonably necessary or appropriate in order to perfect and maintain the security interests granted hereunder in accordance with the UCC (including authorization to describe the Collateral as "all personal property", "all assets" or words of similar meaning).

6. Advances. Upon the occurrence and during the continuance of an Event of Default, if the Obligor fails to perform any of the covenants and agreements contained herein, the Collateral Agent may, at its sole option and in its sole discretion, perform the same and in so doing may expend such sums as the Collateral Agent may reasonably deem advisable in the performance thereof, including, without limitation, the payment of any insurance premiums, the payment of any taxes, a payment to obtain a release of a Lien or potential Lien, expenditures made in defending against any adverse claim and all other expenditures which the Collateral Agent may make for the protection of the security hereof or which may be compelled to make by operation of Law. All such sums and amounts so expended shall be repayable by the Obligor promptly

upon timely written notice thereof and written demand therefor, shall constitute additional Obligations and shall bear interest from the date said amounts are expended at the Default Rate. No such performance of any covenant or agreement by the Collateral Agent on behalf of the Obligor, and no such advance or expenditure therefor, shall relieve the Obligor of any Default or Event of Default. The Collateral Agent may make any payment hereby authorized in accordance with any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien, title or claim except to the extent such payment is being contested in good faith by the Obligor in appropriate proceedings and against which adequate reserves are being maintained in accordance with GAAP.

## 7. Remedies.

(a) General Remedies. Upon the occurrence of an Event of Default and during continuation thereof, and subject to any notice requirements set forth in this Agreement, the Collateral Agent shall have, in addition to the rights and remedies provided herein, in the Credit Documents, in any other documents relating to the Obligations, or by Law (including, but not limited to, levy of attachment, garnishment and the rights and remedies set forth in the UCC of the jurisdiction applicable to the affected Collateral), the rights and remedies of a secured party under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights and remedies are asserted and regardless of whether the UCC applies to the affected Collateral), and further, the Collateral Agent may, with or without judicial process or the aid and assistance of others, (i) enter on any premises on which any of the Collateral may be located and, without resistance or interference by the Obligor, take possession of the Collateral, (ii) dispose of any Collateral on any such premises, (iii) require the Obligor to assemble and make available to the Collateral Agent at the expense of the Obligor any Collateral at any place and time designated by the Collateral Agent which is reasonably convenient to both parties, (iv) remove any Collateral from any such premises for the purpose of effecting sale or other disposition thereof, and/or (v) without demand and without advertisement, notice, hearing or process of law, all of which the Obligor hereby waives to the fullest extent permitted by Law, at any place and time or times, sell and deliver any or all Collateral held by or for it at public or private sale, at any exchange or broker's board or elsewhere, by one or more contracts, in one or more parcels, for cash, upon credit or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion (subject to any and all mandatory legal requirements). The Obligor acknowledges that any such private sale may be at prices and on terms less favorable to the seller than the prices and other terms which might have been obtained at a public sale and, notwithstanding the foregoing, agrees that such private sale shall be deemed to have been made in a commercially reasonable manner. Neither the Collateral Agent's compliance with applicable Law nor its disclaimer of warranties relating to the Collateral shall be considered to adversely affect the commercial reasonableness of any sale. To the extent the rights of notice cannot be legally waived hereunder, the Obligor agrees that any requirement of reasonable notice shall be met if such notice, specifying the place of any public sale or the time after which any private sale is to be made, is personally served on or mailed, postage prepaid, to the Obligor in accordance with the notice provisions of Section 11.1 of the Credit Agreement at least 10 days before the time of sale or other event giving rise to the requirement of such notice. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Collateral Agent shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. To the extent permitted by applicable Law, any holder of Obligations may be a purchaser at any such sale. To the extent permitted by applicable Law, the Obligor hereby waives all of its rights of redemption with respect to any such sale. Subject to the provisions of applicable Law, the Collateral Agent may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, to the extent permitted by Law, be made at the time and place to which the sale was postponed, or the Collateral Agent may further postpone such sale by announcement made at such time and place.

(b) Remedies relating to Accounts. During the continuation of an Event of Default, whether or not the Collateral Agent has exercised any or all of its rights and remedies hereunder, (i) the Obligor will promptly upon written request of the Collateral Agent instruct all account debtors to remit all payments in respect of Accounts to a mailing location selected by the Collateral Agent and (ii) the Collateral Agent shall have the right to enforce the Obligor's rights against its customers and account debtors, and the Collateral Agent or its designee may notify the Obligor's customers and account debtors that the Accounts of the Obligor have been assigned to the Collateral Agent or of the Collateral Agent's security interest therein, and may (either in its own name or in the name of the Obligor or both) demand, collect (including without limitation by way of a lockbox arrangement), receive, take receipt for, sell, sue for, compound, settle, compromise and give acquittance for any and all amounts due or to become due on any Account, and, in the Collateral Agent's discretion, file any claim or take any other action or proceeding to protect and realize upon the security interest of the holders of the Obligations in the Accounts. The Obligor acknowledges and agrees that the Proceeds of its Accounts remitted to or on behalf of the Collateral Agent in accordance with the provisions hereof shall be solely for the Collateral Agent's own convenience and that the Obligor shall not have any right, title or interest in such Accounts or in any such other amounts except as expressly provided herein. Neither the Collateral Agent nor the holders of the Obligations shall have any liability or responsibility to the Obligor for acceptance of a check, draft or other order for payment of money bearing the legend "payment in full" or words of similar import or any other restrictive legend or endorsement or be responsible for determining the correctness of any remittance. Furthermore, during the continuation of an Event of Default, (i) the Collateral Agent shall have the right, but not the obligation, to make test verifications of the Accounts in any manner and through any medium that it reasonably considers advisable, and the Obligor shall furnish all such assistance and information as the Collateral Agent may reasonably require in connection with such test verifications, (ii) upon the Collateral Agent's written request and at the expense of the Obligor, the Obligor shall cause independent public accountants or others satisfactory to the Collateral Agent to furnish to the Collateral Agent reports showing reconciliations, aging and test verifications of, and trial balances for, the Accounts and (iii) the Collateral Agent in its own name or in the name of others may communicate with account debtors on the Accounts to verify with them to the Collateral Agent's satisfaction the existence, amount and terms of any Accounts.

(c) Deposit Accounts. Upon the occurrence of an Event of Default and during continuation thereof, the Collateral Agent may prevent withdrawals or other dispositions of funds in Deposit Accounts (other than Excluded Accounts) maintained with the Collateral Agent.

(d) Access. In addition to the rights and remedies hereunder, upon the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent shall have the right to enter and remain upon the various premises of the Obligor without cost or charge to the Collateral Agent, and use the same, together with materials, supplies, books and records of the Obligor for the purpose of collecting and liquidating the Collateral, or for preparing for sale and conducting the sale of the Collateral, whether by foreclosure, auction or otherwise. In addition, the Collateral Agent may remove Collateral, or any part thereof, from such premises and/or any records with respect thereto, in order to effectively collect or liquidate such Collateral.

(e) Nonexclusive Nature of Remedies. Failure by the Collateral Agent or the holders of the Obligations to exercise any right, remedy or option under this Agreement, any other Credit Document, any other document relating to the Obligations, or as provided by Law, or any delay by the Collateral Agent or the holders of the Obligations in exercising the same, shall not operate as a waiver of any such right, remedy or option. No waiver hereunder shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated, which in the case of the Collateral Agent or the holders of the Obligations shall only be granted as provided herein. To the extent permitted by Law, neither the Collateral Agent, the holders of the Obligations, nor any party acting as attorney for the Collateral Agent or the holders of the Obligations, shall be liable hereunder for any acts or

omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct hereunder. The rights and remedies of the Collateral Agent and the holders of the Obligations under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Collateral Agent or the holders of the Obligations may have.

(f) Retention of Collateral. In addition to the rights and remedies hereunder, the Collateral Agent may, in compliance with Sections 9-620 and 9-621 of the UCC or otherwise complying with the requirements of applicable Law of the relevant jurisdiction, accept or retain the Collateral in satisfaction of the Obligations. Unless and until the Collateral Agent shall have provided such notices, however, the Collateral Agent shall not be deemed to have retained any Collateral in satisfaction of any Obligations for any reason.

(g) Deficiency. In the event that the proceeds of any sale, collection or realization are insufficient to pay all amounts to which the Collateral Agent or the holders of the Obligations are legally entitled, the Obligor shall be liable for the deficiency, together with interest thereon at the Default Rate, together with the costs of collection and the fees, charges and disbursements of counsel. Any surplus remaining after the full payment and satisfaction of the Obligations shall be promptly returned to the Obligor or to whomsoever a court of competent jurisdiction shall determine to be entitled thereto. Notwithstanding any provision to the contrary contained herein, in any other of the Credit Documents or in any other documents relating to the Obligations, the obligations of the Obligor under the Credit Agreement and the other Credit Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any other applicable Debtor Relief Law (including any comparable provisions of any applicable state Law).

#### 8. Rights of the Collateral Agent.

(a) Power of Attorney. In addition to other powers of attorney contained herein, the Obligor hereby designates and appoints the Collateral Agent, on behalf of the holders of the Obligations, and each of its designees or agents, as attorney-in-fact of the Obligor, irrevocably and with power of substitution, with authority to take any or all of the following actions, subject to any notice requirements set forth in this Agreement, upon the occurrence and during the continuance of an Event of Default:

(i) to demand, collect, settle, compromise, adjust, give discharges and releases, all as the Collateral Agent may reasonably determine;

(ii) to commence and prosecute any actions at any court for the purposes of collecting any Collateral and enforcing any other right in respect thereof;

(iii) to defend, settle or compromise any action brought and, in connection therewith, give such discharge or release as the Collateral Agent may deem reasonably appropriate;

(iv) to receive, open and dispose of mail addressed to the Obligor and endorse checks, notes, drafts, acceptances, money orders, bills of lading, warehouse receipts or other instruments or documents evidencing payment, shipment or storage of the goods giving rise to the Collateral of the Obligor on behalf of and in the name of the Obligor, or securing, or relating to such Collateral;

(v) to sell, assign, transfer, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any Collateral or the goods or services which have given rise thereto, as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes;

## ATTACHMENT 6

- (vi) to adjust and settle claims under any insurance policy relating thereto;
- (vii) to execute and deliver all assignments, conveyances, statements, financing statements, renewal financing statements, security agreements, affidavits, notices and other agreements, instruments and documents that the Collateral Agent may determine necessary in order to perfect and maintain the security interests and liens granted in this Agreement and in order to fully consummate all of the transactions contemplated therein;
- (viii) to institute any foreclosure proceedings that the Collateral Agent may deem appropriate;
- (ix) to sign and endorse any drafts, assignments, proxies, stock powers, verifications, notices and other documents relating to the Collateral;
- (x) [Intentionally Omitted];
- (xi) [Intentionally Omitted];
- (xii) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral;
- (xiii) to direct any parties liable for any payment in connection with any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct;
- (xiv) to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral; and
- (xv) to do and perform all such other acts and things as the Collateral Agent may reasonably deem to be necessary, proper or convenient in connection with the Collateral.

This power of attorney is a power coupled with an interest and shall be irrevocable until all Obligations have been paid in full and the Commitments have terminated. The Collateral Agent shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to the Collateral Agent in this Agreement, and shall not be liable for any failure to do so or any delay in doing so. The Collateral Agent shall not be liable for any act or omission or for any error of judgment or any mistake of fact or law in its individual capacity or its capacity as attorney-in-fact except acts or omissions resulting from its gross negligence or willful misconduct. This power of attorney is conferred on the Collateral Agent solely to protect, preserve and realize upon its security interest in the Collateral.

(b) Assignment by the Collateral Agent. The Collateral Agent may from time to time assign the Obligations to a successor Collateral Agent appointed in accordance with the Credit Agreement, and such successor shall be entitled to all of the rights and remedies of the Collateral Agent under this Agreement in relation thereto.

(c) The Collateral Agent's Duty of Care. Other than the exercise of reasonable care to assure the safe custody of the Collateral while being held by the Collateral Agent hereunder, the Collateral Agent shall have no other duty or liability to preserve rights pertaining thereto, it being understood and agreed that the Obligor shall be responsible for preservation of all rights in the Collateral, and the Collateral Agent shall be relieved of all responsibility for the Collateral upon surrendering it or tendering the surrender of it to the

Obligor. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property, which shall be no less than the treatment employed by a reasonable and prudent agent in the industry, it being understood that the Collateral Agent shall not have responsibility for taking any necessary steps to preserve rights against any parties with respect to any of the Collateral. In the event of a public or private sale of Collateral pursuant to Section 7 hereof, the Collateral Agent shall have no responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters, or (ii) taking any steps to clean, repair or otherwise prepare the Collateral for sale.

(d) Liability with Respect to Accounts. Anything herein to the contrary notwithstanding, the Obligor shall remain liable under each of the Accounts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to each such Account. Neither the Collateral Agent nor any holder of Obligations shall have any obligation or liability under any Account (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Collateral Agent or any holder of Obligations of any payment relating to such Account pursuant hereto, nor shall the Collateral Agent or any holder of Obligations be obligated in any manner to perform any of the obligations of the Obligor under or pursuant to any Account (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(e) [Intentionally Omitted].

(f) Releases of Collateral. If any Collateral shall be sold, transferred or otherwise disposed of by the Obligor in a transaction permitted by the Credit Agreement, then the security interest of the Collateral Agent shall terminate automatically and, at the request and sole expense of the Obligor, the Collateral Agent shall promptly execute and deliver to the Obligor all releases and other documents, and take such other action, reasonably necessary for the release of the Liens created hereby or by any other Collateral Document on such Collateral. Upon the payment in full of the Obligations and the termination of the Commitments, the Collateral Agent agrees to deliver to the Obligor any equity certificates or similar possessory collateral in the Collateral Agent's possession and all other reasonably requested applicable release and termination documentation releasing the Collateral Agent's Liens in the Collateral, and to take all other actions reasonably requested by the Obligor to release the Collateral Agent's security interests and Liens granted under this Agreement.

9. Application of Proceeds. Upon the acceleration of the Obligations pursuant to Section 9.2 of the Credit Agreement, any payments in respect of the Obligations and any proceeds of the Collateral, when received by the Collateral Agent or any holder of the Obligations in cash or its equivalent, will be applied in reduction of the Obligations in the order set forth in Section 9.3 of the Credit Agreement.

10. Continuing Agreement. This Agreement shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment, in whole or in part, of any of the Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent or any holder of the Obligations as a preference, fraudulent conveyance or otherwise under any Debtor Relief Law, all as though such payment had not been made; provided that in the event payment of all or any part of the Obligations is rescinded or must be restored or returned, all reasonable costs and expenses (including without limitation any

## ATTACHMENT 6

reasonable legal fees and disbursements) incurred by the Collateral Agent or any holder of the Obligations in defending and enforcing such reinstatement shall be deemed to be included as a part of the Obligations.

11. Amendments; Waivers; Modifications, etc. This Agreement and the provisions hereof may not be amended, waived, modified, changed, discharged or terminated except as set forth in Section 11.4 of the Credit Agreement; provided that any update or revision to Schedule 1 hereof delivered by the Obligor shall not constitute an amendment for purposes of this Section 11 or Section 11.4 of the Credit Agreement.

12. Successors in Interest. This Agreement shall be binding upon the Obligor, its successors and assigns and shall inure, together with the rights and remedies of the Collateral Agent and the holders of the Obligations hereunder, to the benefit of the Collateral Agent and the holders of the Obligations and their successors and permitted assigns.

13. Notices. All notices required or permitted to be given under this Agreement shall be in conformance with Section 11.1 of the Credit Agreement.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

15. Headings. The headings of the sections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

16. Governing Law; Submission to Jurisdiction; Venue; WAIVER OF JURY TRIAL. The terms of Sections 11.13 and 11.14 of the Credit Agreement with respect to governing law, submission to jurisdiction, venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

17. Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

18. Entirety. This Agreement, the other Credit Documents and the other documents relating to the Obligations represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Credit Documents, any other documents relating to the Obligations, or the transactions contemplated herein and therein.

19. Other Security. To the extent that any of the Obligations are now or hereafter secured by property other than the Collateral (including, without limitation, real property and securities owned by the Obligor), or by a guarantee, endorsement or property of any other Person, then the Collateral Agent shall have the right to proceed against such other property, guarantee or endorsement upon the occurrence and during the continuance of any Event of Default, and the Collateral Agent shall have the right, in its sole discretion, to determine which rights, security, liens, security interests or remedies the Collateral Agent shall at any time pursue, relinquish, subordinate, modify or take with respect thereto, without in any way modifying or affecting any of them or the Obligations or any of the rights of the Collateral Agent or the holders of the Obligations under this Agreement, under any other of the Credit Documents or under any other document relating to the Obligations.

## ATTACHMENT 6

20. [Intentionally Omitted].

21. Notwithstanding any provision to the contrary contained herein, in any other of the Credit Documents or in any other documents relating to the Obligations, the obligations of the Obligor under the Credit Agreement, the other Credit Documents and the other documents relating to the Obligations shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under Section 548 of the United States Bankruptcy Code or any comparable provisions of any other Debtor Relief Law.

[SIGNATURE PAGES FOLLOW]



## ATTACHMENT 6

Each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

OBLIGOR:

SHM VENTURA ISLE, LLC

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_

Name:

Title:

## ATTACHMENT 6

Accepted and agreed to as of the date first above written.

REGIONS BANK, as Collateral Agent

By: \_\_\_\_\_

Name:

Title:

ATTACHMENT 6

**SCHEDULE 1**

**COMMERCIAL TORT CLAIMS**

None.

ATTACHMENT 6

EXHIBIT 4(b)(i)

NOTICE

OF

GRANT OF SECURITY INTEREST

IN

COPYRIGHTS

United States Copyright Office

Ladies and Gentlemen:

Please be advised that pursuant to the Security Agreement dated as of April [\_\_\_], 2016 (as the same may be amended, modified, extended or restated from time to time, the "Agreement") by and among the Obligor party thereto and Regions Bank, as collateral agent (the "Collateral Agent") for the holders of the Obligations referenced therein, the Obligor has granted a continuing security interest in, and a right to set off against, any and all right, title and interest of the Obligor in and to the copyrights and copyright applications set forth on Schedule 1 hereto to the Collateral Agent for the ratable benefit of the holders of the Obligations.

The Obligor and the Collateral Agent, on behalf of the holders of the Obligations, hereby acknowledge and agree that the security interest in the foregoing copyrights and copyright applications (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment of any copyright or copyright application.

Very truly yours,

SHM VENTURA ISLE, LLC

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_

Name:

Title:

[Address]

Acknowledged and Accepted:

REGIONS BANK, as Collateral Agent

By: \_\_\_\_\_

Name:

Title:

[Address]

ATTACHMENT 6

EXHIBIT 4(b)(ii)

NOTICE

OF

GRANT OF SECURITY INTEREST

IN

PATENTS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Security Agreement dated as of April [\_\_\_], 2016 (as the same may be amended, modified, extended or restated from time to time, the "Agreement") by and among the Obligor party thereto and Regions Bank, as collateral agent (the "Collateral Agent") for the holders of the Obligations referenced therein, the Obligor has granted a continuing security interest in, and a right to set off against, any and all right, title and interest of the Obligor in and to the patents and patent applications set forth on Schedule 1 hereto to the Collateral Agent for the ratable benefit of the holders of the Obligations.

The Obligor and the Collateral Agent, on behalf of the holders of the Obligations, hereby acknowledge and agree that the security interest in the foregoing patents and patent applications (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment of any patent or patent application.

Very truly yours,

SHM VENTURA ISLE, LLC

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_

Name:

Title:

[Address]

Acknowledged and Accepted:

REGIONS BANK, as Collateral Agent

By: \_\_\_\_\_

Name:

Title:

[Address]

ATTACHMENT 6

EXHIBIT 4(c)(iii)

NOTICE

OF

GRANT OF SECURITY INTEREST

IN

TRADEMARKS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Security Agreement dated as of April [\_\_\_], 2016 (as the same may be amended, modified, extended or restated from time to time, the "Agreement") by and among the Obligor party thereto and Regions Bank, as collateral agent (the "Collateral Agent") for the holders of the Obligations referenced therein, the undersigned Obligor has granted a continuing security interest in, and a right to set off against, any and all right, title and interest of the Obligor in and to the trademarks and trademark applications set forth on Schedule 1 hereto to the Collateral Agent for the ratable benefit of the holders of the Obligations.

The Obligor and the Collateral Agent, on behalf of the holders of the Obligations, hereby acknowledge and agree that the security interest in the foregoing trademarks and trademark applications (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment of any trademark or trademark application.

Very truly yours,

SHM VENTURA ISLE, LLC

By: Safe Harbor Marinas, LLC, its sole member

By: \_\_\_\_\_

Name:

Title:

[Address]

Acknowledged and Accepted:

REGIONS BANK, as Collateral Agent

By: \_\_\_\_\_

Name:

Title:

[Address]

## PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT (this “Agreement”) is entered into as of April [\_\_\_], 2016 among SAFE HARBOR MARINAS, LLC, a Delaware limited liability company (the “Obligor”), and REGIONS BANK, in its capacity as collateral agent (in such capacity, the “Collateral Agent”) for the holders of the Obligations (as defined below).

RECITALS

WHEREAS, pursuant to the Credit Agreement (as amended, modified, supplemented, increased, extended, restated, refinanced and replaced from time to time, the “Credit Agreement”) dated as of the date hereof among SHM Ventura Isle, LLC, a Delaware limited liability company (the “Borrower”), the Lenders identified therein and Regions Bank, as Administrative Agent and Collateral Agent, the Lenders have agreed to make Loans upon the terms and subject to the conditions set forth therein; and

WHEREAS, this Agreement is required by the terms of the Credit Agreement.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

(a) Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement, and the following terms which are defined in the Uniform Commercial Code in effect from time to time in the State of New York except as such terms may be used in connection with the perfection of the Collateral and then the applicable jurisdiction with respect to such affected Collateral shall apply (the “UCC”): Accession, Adverse Claim, Financial Asset, Investment Company Security, Proceeds, Securities Account and Security.

(b) In addition, the following terms shall have the meanings set forth below:

“Collateral” has the meaning provided in Section 2 hereof.

“Pledged Equity” means one hundred percent (100%) of the issued and outstanding Equity Interests of the Borrower as set forth on Schedule 1 hereto, together with the certificates (or other agreements or instruments), if any, representing such Equity Interests, and all options and other rights, contractual or otherwise, with respect thereto, including, but not limited to, the following:

(1) all Equity Interests representing a dividend thereon, or representing a distribution or return of capital upon or in respect thereof, or resulting from a stock split, revision, reclassification or other exchange therefor, and any subscriptions, warrants, rights or options issued to the holder thereof, or otherwise in respect thereof; and

(2) in the event of any consolidation or merger involving the issuer thereof and in which such issuer is not the surviving Person, all shares of each class of the Equity Interests of the successor Person formed by or resulting from such consolidation or merger, to the extent that such successor Person is a direct Subsidiary of the Obligor.

2. Grant of Security Interest in the Collateral. To secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Obligations, the Obligor hereby grants to the Collateral Agent, for the benefit of the holders of the

## ATTACHMENT 7

Obligations, a continuing security interest in, and a right to set off against, any and all right, title and interest of the Obligor in and to all of the following, whether now owned or existing or owned, acquired, or arising hereafter (collectively, the “Collateral”): (a) all Pledged Equity; (b) all books and records related to any of the foregoing; and (c) all Accessions and all Proceeds of any and all of the foregoing.

Notwithstanding anything to the contrary contained herein, the security interests granted under this Agreement shall not extend to, and shall not include any Excluded Property.

The Obligor and the Collateral Agent, on behalf of the holders of the Obligations, hereby acknowledge and agree that the security interest created hereby in the Collateral constitutes continuing collateral security for all of the Obligations, whether now existing or hereafter arising.

3. Representations and Warranties. The Obligor hereby represents and warrants to the Collateral Agent, for the benefit of the holders of the Obligations, that:

(a) Ownership. The Obligor is the legal and beneficial owner of its Collateral and has the right to pledge, sell, assign or transfer the same. There exists no Adverse Claim with respect to the Pledged Equity of the Obligor.

(b) Security Interest/Priority. This Agreement creates a valid security interest in favor of the Collateral Agent, for the benefit of the holders of the Obligations, in the Collateral of the Obligor and, when properly perfected by filing, shall constitute a valid and perfected, first priority security interest in such Collateral (including all uncertificated Pledged Equity consisting of partnership or limited liability company interests that do not constitute Securities), to the extent such security interest can be perfected by filing under the UCC, free and clear of all Liens except for Liens that would be Permitted Liens if the Obligor was a party to the Credit Agreement. The taking possession by the Collateral Agent of the certificated securities (if any) evidencing the Pledged Equity will perfect and establish the first priority of the Collateral Agent’s security interest in all the Pledged Equity evidenced by such certificated securities.

(c) [Intentionally Omitted].

(d) [Intentionally Omitted].

(e) Authorization of Pledged Equity. All Pledged Equity is duly authorized and validly issued, is fully paid and, to the extent applicable, nonassessable and is not subject to the preemptive rights, warrants, options or other rights to purchase of any Person, or equityholder, voting trust or similar agreements outstanding with respect to, or property that is convertible, into, or that requires the issuance and sale of, any of the Pledged Equity, except to the extent expressly permitted under the Credit Documents.

(f) No Other Equity Interests, Etc. As of the Closing Date, the Obligor does not own any certificated Equity Interests in the Borrower that are required to be pledged and delivered to the Collateral Agent hereunder other than as set forth on Schedule 1 hereto, and all such certificated Equity Interests have been delivered to the Collateral Agent.

(g) Partnership and Limited Liability Company Interests. Except as previously disclosed to the Collateral Agent in writing, none of the Collateral consisting of an interest in a partnership or a limited liability company (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a Security governed by Article 8 of



## ATTACHMENT 7

the UCC, (iii) is an Investment Company Security, (iv) is held in a Securities Account or (v) constitutes a Security or a Financial Asset.

(h) [Intentionally Omitted].

(i) Consents; Etc. There are no restrictions in any Organization Document governing any Pledged Equity or any other document related thereto which would limit or restrict (i) the grant of a Lien pursuant to this Agreement on such Pledged Equity, (ii) the perfection of such Lien or (iii) the exercise of remedies in respect of such perfected Lien in the Pledged Equity as contemplated by this Agreement. Except for (i) the filing or recording of UCC financing statements, (ii) obtaining control or possession to perfect the Liens created by this Agreement (to the extent required under Section 4(a) hereof), (iii) such actions as may be required by Laws affecting the offering and sale of securities and (iv) consents, authorizations, filings or other actions which have been obtained or made, no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority and no consent of any other Person (including, without limitation, any stockholder, member or creditor of the Obligor), is required for (A) the grant by the Obligor of the security interest in the Collateral granted hereby or for the execution, delivery or performance of this Agreement by the Obligor, (B) the perfection of such security interest (to the extent such security interest can be perfected by filing under the UCC or the granting of control or possession (to the extent required under Section 4(a) hereof) or (C) the exercise by the Collateral Agent or the holders of the Obligations of the rights and remedies provided for in this Agreement.

(j) [Intentionally Omitted].

4. Covenants. The Obligor covenants that until all Obligations have been paid in full and the Commitments have terminated, the Obligor shall:

(a) Pledged Equity. Deliver to the Collateral Agent promptly upon the receipt thereof by or on behalf of the Obligor, all certificates and instruments constituting Pledged Equity. Prior to delivery to the Collateral Agent, all such certificates constituting Pledged Equity shall be held in trust by the Obligor for the benefit of the Collateral Agent pursuant hereto. All such certificates representing Pledged Equity shall be delivered in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, substantially in the form provided in Exhibit 4(a) hereto.

(b) Filing of Financing Statements, etc. The Obligor shall execute and deliver to the Collateral Agent such agreements, assignments or instruments (including affidavits, notices, reaffirmations and amendments and restatements of existing documents, as the Collateral Agent may reasonably request in writing) and do all such other things as the Collateral Agent may reasonably deem necessary or appropriate (i) to assure to the Collateral Agent its security interests hereunder, including such instruments as the Collateral Agent may from time to time reasonably request in writing in order to perfect and maintain the security interests granted hereunder in accordance with the UCC, (ii) to consummate the transactions contemplated hereby and (iii) to otherwise protect and assure the Collateral Agent of its rights and interests hereunder. Furthermore, the Obligor also hereby irrevocably makes, constitutes and appoints the Collateral Agent, its nominee or any other person whom the Collateral Agent may designate, as the Obligor's attorney in fact with full power and for the limited purpose to sign in the name of the Obligor any financing statements, or amendments and supplements to financing statements, renewal financing statements, notices or any similar documents which in the Collateral Agent's reasonable discretion would be necessary or appropriate in order to perfect and maintain perfection of the security interests granted hereunder, such power, being coupled with an interest, being and remaining irrevocable until all Obligations

## ATTACHMENT 7

have been paid in full and the Commitments have terminated. The Obligor hereby agrees that a carbon, photographic or other reproduction of this Agreement or any such financing statement is sufficient for filing as a financing statement by the Collateral Agent without notice thereof to the Obligor wherever the Collateral Agent may in its sole discretion desire to file the same.

(c) [Intentionally Omitted].

(d) [Intentionally Omitted].

(e) Books and Records. Mark its books and records (and shall cause the issuer of the Pledged Equity of the Obligor to mark its books and records) to reflect the security interest granted pursuant to this Agreement.

(f) [Intentionally Omitted].

(g) Issuance or Acquisition of Equity Interests in Partnership or Limited Liability Company. Not without executing and delivering, or causing to be executed and delivered, to the Collateral Agent such agreements, documents and instruments as the Collateral Agent may reasonably require, issue or acquire any Pledged Equity consisting of an interest in a partnership or a limited liability company that (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a Security governed by Article 8 of the UCC, (iii) is an Investment Company Security, (iv) is held in a Securities Account or (v) constitutes a Security or a Financial Asset.

5. Authorization to File Financing Statements. The Obligor hereby authorizes the Collateral Agent to prepare and file such financing statements (including continuation statements) or amendments thereof or supplements thereto or other instruments as the Collateral Agent may from time to time deem reasonably necessary or appropriate in order to perfect and maintain the security interests granted hereunder in accordance with the UCC.

6. Advances. Upon the occurrence and during the continuance of an Event of Default, if the Obligor fails to perform any of the covenants and agreements contained herein, the Collateral Agent may, at its sole option and in its sole discretion, perform the same and in so doing may expend such sums as the Collateral Agent may reasonably deem advisable in the performance thereof, including, without limitation, the payment of any insurance premiums, the payment of any taxes, a payment to obtain a release of a Lien or potential Lien, expenditures made in defending against any adverse claim and all other expenditures which the Collateral Agent may make for the protection of the security hereof or which may be compelled to make by operation of Law. All such sums and amounts so expended shall be repayable by the Obligor promptly upon timely written notice thereof and written demand therefor, shall constitute additional Obligations and shall bear interest from the date said amounts are expended at the Default Rate. No such performance of any covenant or agreement by the Collateral Agent on behalf of the Obligor, and no such advance or expenditure therefor, shall relieve the Obligor of any Default or Event of Default. The Collateral Agent may make any payment hereby authorized in accordance with any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien, title or claim except to the extent such payment is being contested in good faith by the Obligor in appropriate proceedings and against which adequate reserves are being maintained in accordance with GAAP.

7. Remedies.

(a) General Remedies. Upon the occurrence of an Event of Default and during continuation thereof, and subject to any notice requirements set forth in this Agreement, the Collateral Agent shall have, in addition to the rights and remedies provided herein, in the Credit Documents, in any other documents relating to the Obligations, or by Law (including, but not limited to, levy of attachment, garnishment and the rights and remedies set forth in the UCC of the jurisdiction applicable to the affected Collateral), the rights and remedies of a secured party under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights and remedies are asserted and regardless of whether the UCC applies to the affected Collateral), and further, the Collateral Agent may, with or without judicial process or the aid and assistance of others, (i) enter on any premises on which any of the Collateral may be located and, without resistance or interference by the Obligor, take possession of the Collateral, (ii) dispose of any Collateral on any such premises, (iii) require the Obligor to assemble and make available to the Collateral Agent at the expense of the Obligor any Collateral at any place and time designated by the Collateral Agent which is reasonably convenient to both parties, (iv) remove any Collateral from any such premises for the purpose of effecting sale or other disposition thereof, and/or (v) without demand and without advertisement, notice, hearing or process of law, all of which the Obligor hereby waives to the fullest extent permitted by Law, at any place and time or times, sell and deliver any or all Collateral held by or for it at public or private sale (which in the case of a private sale of Pledged Equity, shall be to a restricted group of purchasers who will be obligated to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale thereof), at any exchange or broker's board or elsewhere, by one or more contracts, in one or more parcels, for cash, upon credit or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion (subject to any and all mandatory legal requirements). The Obligor acknowledges that any such private sale may be at prices and on terms less favorable to the seller than the prices and other terms which might have been obtained at a public sale and, notwithstanding the foregoing, agrees that such private sale shall be deemed to have been made in a commercially reasonable manner and, in the case of a sale of Pledged Equity, that the Collateral Agent shall have no obligation to delay sale of any such securities for the period of time necessary to permit the issuer of such securities to register such securities for public sale under the Securities Act of 1933. Neither the Collateral Agent's compliance with applicable Law nor its disclaimer of warranties relating to the Collateral shall be considered to adversely affect the commercial reasonableness of any sale. To the extent the rights of notice cannot be legally waived hereunder, the Obligor agrees that any requirement of reasonable notice shall be met if such notice, specifying the place of any public sale or the time after which any private sale is to be made, is personally served on or mailed, postage prepaid, to the Obligor in accordance with the notice provisions of Section 11.1 of the Credit Agreement at least 10 days before the time of sale or other event giving rise to the requirement of such notice. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Obligor further acknowledges and agrees that any offer to sell any Pledged Equity which has been (i) publicly advertised on a bona fide basis in a newspaper or other publication of general circulation in the financial community of New York, New York (to the extent that such offer may be advertised without prior registration under the Securities Act of 1933), or (ii) made privately in the manner described above shall be deemed to involve a "public sale" under the UCC, notwithstanding that such sale may not constitute a "public offering" under the Securities Act of 1933, and the Collateral Agent may, in such event, bid for the purchase of such securities. The Collateral Agent shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. To the extent permitted by applicable Law, any holder of Obligations may be a purchaser at any such sale. To the extent permitted by applicable Law, the Obligor hereby waives all of its rights of redemption with respect to any such sale. Subject to the provisions of applicable Law, the Collateral Agent may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, to the extent permitted by Law, be made at the time and place to which the sale was postponed, or the Collateral Agent may further postpone such sale by announcement made at such time and place.

(b) [Intentionally Omitted].

(c) [Intentionally Omitted].

(d) Access. In addition to the rights and remedies hereunder, upon the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent shall have the right to enter and remain upon the various premises of the Obligor without cost or charge to the Collateral Agent, and use the same, together with materials, supplies, books and records of the Obligor for the purpose of collecting and liquidating the Collateral, or for preparing for sale and conducting the sale of the Collateral, whether by foreclosure, auction or otherwise. In addition, the Collateral Agent may remove Collateral, or any part thereof, from such premises and/or any records with respect thereto, in order to effectively collect or liquidate such Collateral.

(e) Nonexclusive Nature of Remedies. Failure by the Collateral Agent or the holders of the Obligations to exercise any right, remedy or option under this Agreement, any other Credit Document, any other document relating to the Obligations, or as provided by Law, or any delay by the Collateral Agent or the holders of the Obligations in exercising the same, shall not operate as a waiver of any such right, remedy or option. No waiver hereunder shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated, which in the case of the Collateral Agent or the holders of the Obligations shall only be granted as provided herein. To the extent permitted by Law, neither the Collateral Agent, the holders of the Obligations, nor any party acting as attorney for the Collateral Agent or the holders of the Obligations, shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct hereunder. The rights and remedies of the Collateral Agent and the holders of the Obligations under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Collateral Agent or the holders of the Obligations may have.

(f) Retention of Collateral. In addition to the rights and remedies hereunder, the Collateral Agent may, in compliance with Sections 9-620 and 9-621 of the UCC or otherwise complying with the requirements of applicable Law of the relevant jurisdiction, accept or retain the Collateral in satisfaction of the Obligations. Unless and until the Collateral Agent shall have provided such notices, however, the Collateral Agent shall not be deemed to have retained any Collateral in satisfaction of any Obligations for any reason.

(g) Deficiency. In the event that the proceeds of any sale, collection or realization are insufficient to pay all amounts to which the Collateral Agent or the holders of the Obligations are legally entitled, the Obligor shall be liable for the deficiency, together with interest thereon at the Default Rate, together with the costs of collection and the fees, charges and disbursements of counsel. Any surplus remaining after the full payment and satisfaction of the Obligations shall be promptly returned to the Obligor or to whomsoever a court of competent jurisdiction shall determine to be entitled thereto. Notwithstanding any provision to the contrary contained herein, in any other of the Credit Documents or in any other documents relating to the Obligations, the obligations of the Obligor under the Credit Agreement and the other Credit Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any other applicable Debtor Relief Law (including any comparable provisions of any applicable state Law).

## 8. Rights of the Collateral Agent.

(a) Power of Attorney. In addition to other powers of attorney contained herein, the Obligor hereby designates and appoints the Collateral Agent, on behalf of the holders of the Obligations, and each of

## ATTACHMENT 7

its designees or agents, as attorney-in-fact of the Obligor, irrevocably and with power of substitution, with authority to take any or all of the following actions, subject to any notice requirements set forth in this Agreement, upon the occurrence and during the continuance of an Event of Default:

(i) to demand, collect, settle, compromise, adjust, give discharges and releases, all as the Collateral Agent may reasonably determine;

(ii) to commence and prosecute any actions at any court for the purposes of collecting any Collateral and enforcing any other right in respect thereof;

(iii) to defend, settle or compromise any action brought and, in connection therewith, give such discharge or release as the Collateral Agent may deem reasonably appropriate;

(iv) [intentionally omitted];

(v) to sell, assign, transfer, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any Collateral, as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes;

(vi) [intentionally omitted];

(vii) to execute and deliver all assignments, conveyances, statements, financing statements, renewal financing statements, security agreements, affidavits, notices and other agreements, instruments and documents that the Collateral Agent may determine necessary in order to perfect and maintain the security interests and liens granted in this Agreement and in order to fully consummate all of the transactions contemplated therein;

(viii) to institute any foreclosure proceedings that the Collateral Agent may deem appropriate;

(ix) to sign and endorse any drafts, assignments, proxies, stock powers, verifications, notices and other documents relating to the Collateral;

(x) to exchange any of the Pledged Equity or other property upon any merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Pledged Equity with any committee, depository, transfer agent, registrar or other designated agency upon such terms as the Collateral Agent may reasonably deem appropriate;

(xi) to vote for a shareholder resolution, or to sign an instrument in writing, sanctioning the transfer of any or all of the Pledged Equity into the name of the Collateral Agent or one or more of the holders of the Obligations or into the name of any transferee to whom the Pledged Equity or any part thereof may be sold pursuant to Section 7 hereof;

(xii) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral;

(xiii) to direct any parties liable for any payment in connection with any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct;

## ATTACHMENT 7

(xiv) to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral; and

(xv) to do and perform all such other acts and things as the Collateral Agent may reasonably deem to be necessary, proper or convenient in connection with the Collateral.

This power of attorney is a power coupled with an interest and shall be irrevocable until all Obligations have been paid in full and the Commitments have terminated. The Collateral Agent shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to the Collateral Agent in this Agreement, and shall not be liable for any failure to do so or any delay in doing so. The Collateral Agent shall not be liable for any act or omission or for any error of judgment or any mistake of fact or law in its individual capacity or its capacity as attorney-in-fact except acts or omissions resulting from its gross negligence or willful misconduct. This power of attorney is conferred on the Collateral Agent solely to protect, preserve and realize upon its security interest in the Collateral.

(b) Assignment by the Collateral Agent. The Collateral Agent may from time to time assign the Obligations to a successor Collateral Agent appointed in accordance with the Credit Agreement, and such successor shall be entitled to all of the rights and remedies of the Collateral Agent under this Agreement in relation thereto.

(c) The Collateral Agent's Duty of Care. Other than the exercise of reasonable care to assure the safe custody of the Collateral while being held by the Collateral Agent hereunder, the Collateral Agent shall have no other duty or liability to preserve rights pertaining thereto, it being understood and agreed that the Obligor shall be responsible for preservation of all rights in the Collateral, and the Collateral Agent shall be relieved of all responsibility for the Collateral upon surrendering it or tendering the surrender of it to the Obligor. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property, which shall be no less than the treatment employed by a reasonable and prudent agent in the industry, it being understood that the Collateral Agent shall not have responsibility for taking any necessary steps to preserve rights against any parties with respect to any of the Collateral. In the event of a public or private sale of Collateral pursuant to Section 7 hereof, the Collateral Agent shall have no responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters, or (ii) taking any steps to clean, repair or otherwise prepare the Collateral for sale.

(d) [Intentionally Omitted].

(e) Voting and Payment Rights in Respect of the Pledged Equity.

(i) So long as no Event of Default shall exist and be continuing, the Obligor may (A) exercise any and all voting and other consensual rights pertaining to the Pledged Equity of the Obligor or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Credit Agreement and (B) receive and retain any and all dividends (other than stock dividends and other dividends constituting Collateral which are addressed hereinabove), principal or interest paid in respect of the Pledged Equity to the extent they are allowed under the Credit Agreement; and

(ii) Upon the occurrence of and during the continuance of an Event of Default and upon notice by the Collateral Agent to the Obligor of its intention to exercise its rights

hereunder, (A) all rights of the Obligor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to clause (i)(A) above shall cease and all such rights shall thereupon become vested in the Collateral Agent which shall then have the sole right to exercise such voting and other consensual rights, (B) all rights of the Obligor to receive the dividends, principal and interest payments which it would otherwise be authorized to receive and retain pursuant to clause (i)(B) above shall cease and all such rights shall thereupon be vested in the Collateral Agent which shall then have the sole right to receive and hold as Collateral such dividends, principal and interest payments, and (C) all dividends, principal and interest payments which are received by the Obligor contrary to the provisions of clause (ii)(B) above shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other property or funds of the Obligor, and shall be forthwith paid over to the Collateral Agent as Collateral in the exact form received, to be held by the Collateral Agent as Collateral and as further collateral security for the Obligations.

(f) Releases of Collateral. If any Collateral shall be sold, transferred or otherwise disposed of by the Obligor in a transaction permitted by the Credit Agreement, then the security interest of the Collateral Agent shall terminate automatically and, at the request and sole expense of the Obligor, the Collateral Agent shall promptly execute and deliver to the Obligor all releases and other documents, and take such other action, reasonably necessary for the release of the Liens created hereby on such Collateral. The Collateral Agent may release any of the Pledged Equity from this Agreement or may substitute any of the Pledged Equity for other Pledged Equity without altering, varying or diminishing in any way the force, effect, lien, pledge or security interest of this Agreement as to any Pledged Equity not expressly released or substituted, and this Agreement shall continue as a first priority lien on all Pledged Equity not expressly released or substituted. Upon the payment in full of the Obligations and the termination of the Commitments, the Collateral Agent agrees to deliver to the Obligor any equity certificates or similar possessory collateral in the Collateral Agent's possession and all other reasonably requested applicable release and termination documentation releasing the Collateral Agent's Liens in the Collateral, and to take all other actions reasonably requested by the Obligor to release the Collateral Agent's security interests and Liens granted under this Agreement.

9. Application of Proceeds. Upon the acceleration of the Obligations pursuant to Section 9.2 of the Credit Agreement, any payments in respect of the Obligations and any proceeds of the Collateral, when received by the Collateral Agent or any holder of the Obligations in cash or its equivalent, will be applied in reduction of the Obligations in the order set forth in Section 9.3 of the Credit Agreement.

10. Continuing Agreement. This Agreement shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment, in whole or in part, of any of the Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent or any holder of the Obligations as a preference, fraudulent conveyance or otherwise under any Debtor Relief Law, all as though such payment had not been made; provided that in the event payment of all or any part of the Obligations is rescinded or must be restored or returned, all reasonable costs and expenses (including without limitation any reasonable legal fees and disbursements) incurred by the Collateral Agent or any holder of the Obligations in defending and enforcing such reinstatement shall be deemed to be included as a part of the Obligations.

11. Amendments; Waivers; Modifications, etc. This Agreement and the provisions hereof may not be amended, waived, modified, changed, discharged or terminated except pursuant to a writing executed by each of the parties hereto.

12. Successors in Interest. This Agreement shall be binding upon the Obligor, its successors and assigns and shall inure, together with the rights and remedies of the Collateral Agent and the holders of the

## ATTACHMENT 7

Obligations hereunder, to the benefit of the Collateral Agent and the holders of the Obligations and their successors and permitted assigns.

13. Notices. All notices required or permitted to be given under this Agreement shall be made to the Obligor in conformance with Section 11.1 of the Credit Agreement; provided that any notice to the Obligor shall be delivered to the Borrower in accordance with the terms of Section 11.1 of the Credit Agreement.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

15. Headings. The headings of the sections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

16. Governing Law; Submission to Jurisdiction; Venue; WAIVER OF JURY TRIAL. The terms of Sections 11.13 and 11.14 of the Credit Agreement with respect to governing law, submission to jurisdiction, venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

17. Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

18. Entirety. This Agreement, the other Credit Documents and the other documents relating to the Obligations represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Credit Documents, any other documents relating to the Obligations, or the transactions contemplated herein and therein.

19. Other Security. To the extent that any of the Obligations are now or hereafter secured by property other than the Collateral (including, without limitation, real property and securities), or by a guarantee, endorsement or property of any other Person, then the Collateral Agent shall have the right to proceed against such other property, guarantee or endorsement upon the occurrence and during the continuance of any Event of Default, and the Collateral Agent shall have the right, in its sole discretion, to determine which rights, security, liens, security interests or remedies the Collateral Agent shall at any time pursue, relinquish, subordinate, modify or take with respect thereto, without in any way modifying or affecting any of them or the Obligations or any of the rights of the Collateral Agent or the holders of the Obligations under this Agreement, under any other of the Credit Documents or under any other document relating to the Obligations.

[SIGNATURE PAGES FOLLOW]



## ATTACHMENT 7

Each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

OBLIGOR:

SAFE HARBOR MARINAS, LLC

By: \_\_\_\_\_

Name:

Title:

## ATTACHMENT 7

Accepted and agreed to as of the date first above written.

REGIONS BANK, as Collateral Agent

By: \_\_\_\_\_

Name:

Title:

ATTACHMENT 7

**SCHEDULE 1**  
**PLEDGED EQUITY**

<b>Obligor</b>	<b>Name of Restricted Subsidiary</b>	<b>Number of Shares</b>	<b>Certificate Number</b>	<b>Percentage Ownership</b>
Safe Harbor Marinas, LLC	SHM Ventura Isle, LLC	N/A	N/A	100%

# ATTACHMENT 7

## EXHIBIT 4(a)

### IRREVOCABLE STOCK POWER

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers to

the following equity interests of \_\_\_\_\_, a \_\_\_\_\_ corporation:

No. of Shares

Certificate No.

and irrevocably appoints \_\_\_\_\_ its agent and attorney-in-fact to transfer all or any part of such equity interests and to take all necessary and appropriate action to effect any such transfer. The agent and attorney-in-fact may substitute and appoint one or more persons to act for him.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_