SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **October 15, 2015**

SG BLOCKS, INC.
(Exact Name of Registrant as Specified in its Charter)

Delaware	**001-16501**	**73-1541378**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification Number)

912 Bluff Road
Brentwood, TN 37027
(Address of Principal Executive Offices, Zip Code)

Registrant’s telephone number, including area code: 646-240-4235

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

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

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

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

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

Item 1.01 Entry into a Material Definitive Agreement

Bankruptcy and Plan of Reorganization

On October 15, 2015, SG Blocks, Inc. (the "Company") and its subsidiaries SG Building Blocks, Inc. ("SGBB") and Endaxi Infrastructure Group, Inc. (each a "Subsidiary," together, the "Subsidiaries" and together with the Company, the "Debtors"), filed voluntary petitions (the "Bankruptcy Petitions") for reorganization under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtors filed a motion with the Bankruptcy Court seeking joint administration of their Chapter 11 cases under the caption *In re SG Blocks, Inc. et al.*, Case No. 15-12790 (such proceeding, the "Bankruptcy Proceeding"). After filing such voluntary petitions the Debtors operated their businesses as "debtors-in-possession" under jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court until the Effective Date (as defined below).

On February 29, 2016, the Debtors filed a Disclosure Statement (the "Disclosure Statement"), attaching a Plan of Reorganization (the "Plan"), along with a motion seeking approval of the Disclosure Statement by the Bankruptcy Court. By order dated April 25, 2016 (the "Order"), the Bankruptcy Court approved the Disclosure Statement, set May 23, 2016 as the hearing date for confirmation of the Plan and fixed related Plan confirmation deadlines. In accordance with the Bankruptcy Court's Order, the Debtors mailed the relevant materials to all voting parties (as approved by the Bankruptcy Court), including the Company's shareholders, for solicitation of votes on the Plan. On May 23, 2016, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Plan. A copy of the confirmed Plan is attached as Exhibit A to the Confirmation Order. The Plan became effective on June 30, 2016 (the "Effective Date").

The Disclosure Statement includes certain exhibits which contain financial projections and other financial data and analyses prepared for purposes of the Chapter 11 cases (the "Disclosure Statement Financial Information"). The Company cautions investors and potential investors not to place undue reliance upon the information contained in the Disclosure Statement Financial Information, which was not prepared for the purpose of providing the basis for an investment decision relating to any of the securities of the Company. The Disclosure Statement Financial Information has not been audited or reviewed by independent accountants. The Disclosure Statement Financial Information contains information different from that required to be included in the Company's reports pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and such Disclosure Statement Financial Information may not be indicative of the Company's financial condition or operating results that would be reflected in the Company's financial statements or in its reports pursuant to the Exchange Act. Results set forth in the Disclosure Statement Financial Information should not be viewed as indicative of future results.

A copy of the Confirmation Order, with the Plan attached as Exhibit A, and the Disclosure Statement (with attachments) and the Order approving the Disclosure Statement are attached to this Current Report on Form 8-K as Exhibit 2.1, Exhibit 2.2 and Exhibit 2.3, respectively, and are incorporated herein by reference.

DIP Financing

On October 15, 2015, the Company, as borrower, and its subsidiaries, as guarantors, entered into a Debtor in Possession Credit Agreement (the "DIP Credit Agreement" and the loans thereunder, the "DIP Loan") with Hillair Capital Investments L.P. ("HCI"), and, as condition to the making of the DIP Loan, the Company and its subsidiaries entered into that Senior Security Agreement (the "Security Agreement" and together with the DIP Credit Agreement and the other documents entered into in connection therewith, the "DIP Facility"), also dated as of October 15, 2015, with Hillair Capital Management LLC ("HCM") pursuant to which the Company and its subsidiaries granted HCM a first priority security interest in all of their respective assets for the benefit of HCI. The DIP Loan had a maximum principal amount of $600,000, bore interest at a rate of 12% and was due and payable upon the earlier to occur of April 15, 2016 or other dates specified in the DIP Credit Agreement, and required the Company to pay a collateral fee of $25,000. The DIP Facility contained representations, warranties, affirmative and negative covenants and other provisions typical for a debtor-in-possession loan. If the Company failed to make any payment when due, breached any covenant, representation or warranty, or there occurred any other Event of Default (as defined in the DIP Credit Agreement) then at the option of HCI the entire principal and interest owing thereon immediately would become due and owing. The funds advanced under the DIP Facility were used by the Company to fund its operation during the Bankruptcy Proceeding, including payment of professional fees and expenses. As discussed in Item 1.02 of this Current Report on Form 8-K, the DIP Loan was paid in full, and the DIP Facility terminated, on the Effective Date.

A copy of each of the DIP Credit Agreement and the Security Agreement are attached to this Current Report on Form 8-K as Exhibit 4.1 and Exhibit 4.2, respectively, and are incorporated herein by reference.

Issuance of Common Stock

On the Effective Date, pursuant to the terms of the Plan, the Company issued unregistered shares of Common Stock (as defined below) as further detailed under "*Issuance of Common Stock*" in Item 3.02 of this Current Report on Form 8-K and incorporated into this Item 1.01 by reference.

Issuance of Preferred Stock

On the Effective Date, pursuant to the terms of the Plan, the Company issued unregistered shares of Preferred Stock (as defined below) as further detailed under "*Issuance of Preferred Stock*" in Item 3.02 of this Current Report on Form 8-K and incorporated into this Item 1.01 by reference.

Exit Financing

On the Effective Date, and pursuant to the terms of the Plan, the Company entered into a Securities Purchase Agreement, dated June 30, 2016, (the "SPA"), pursuant to which the Company sold for a subscription price of $2.0 million a 12% Original Issue Discount Senior Secured Convertible Debenture to HCI in the principal amount of $2.5 million, with a maturity date of June 30, 2018 (the "Exit Facility"). The Exit Facility is convertible at HCI's option at any time in whole or in part into shares of Common Stock at a ratio of 1 share for every $1.25 of debt. Upon a payment default, a breach of a representation, warranty or covenant, a Change in Control Transaction, a Fundamental Transaction or any other Event of Default (each as defined in the Exit Facility), at HCI's election the entire amount of the Exit Facility at the Mandatory Default Amount will become due and, until paid in full, and any outstanding amounts will bear interest at the lesser of 18% or the maximum rate permitted by law. The "Mandatory Default Amount" is the greater of 130% of the outstanding principal amount of the Exit Facility or a formula price reflecting the fair market value of the number of shares of Common Stock of the Company into which the outstanding principal amount of the Exit Facility could be converted, in either case plus all other amounts, costs, expenses and liquidated damages due in respect of the Exit Facility. Pursuant to that certain Subsidiary Guaranty Agreement, effective as of the Effective Date (the "Guarantee Agreement"), by SGBB in favor of HCI, SGBB unconditionally guaranteed (the "Guarantee") the obligations and indebtedness owed to HCI under the Exit Facility and the Guarantee is secured by a first-priority lien and security interest on all of the Guarantor's assets. The Exit Facility and SGBB's obligations under the Guarantee are secured by a first-priority lien and security interest on all of the Company's and SGBB's assets pursuant to that certain Security Agreement, dated as of the Effective Date, by and between the Company, SGBB and HCI (the "Security Agreement"). The Exit Facility will be used (i) to make a one hundred percent (100%) distribution for payment of unsecured claims in accordance with the Plan, (ii) to pay all costs of the administration of the Company's Bankruptcy, (iii) to pay all amounts owed under the DIP Facility and (iv) for general working capital purposes of the Company. This is an original issue discount obligation and accordingly there is no regularly scheduled interest payments. The Company may not prepay any portion of the principal amount of the Exit Facility without the prior written consent of HCI.

Copies of the Exit Facility, the Security Agreement and the Guaranty Agreement are attached to this Current Report on Form 8-K as Exhibit 4.3, Exhibit 4.4 and Exhibit 4.5, respectively, and are incorporated herein by reference.

Board Appointments

Pursuant to the Plan, HCI was entitled to designate three directors to serve on the Company's Board of Directors ("Board"), and designated Neal Kaufman, Sean McAvoy and Mahesh Shetty. On July 1, 2016, Messers. Kaufman, McAvoy and Shetty were elected to the Board. In addition, on July 1, 2016 Paul Galvin and Christopher Melton were reelected to the Board and Steven Armstrong, J. Bryant Kirkland III, Joseph Tacopina, J. Scott Magrane, Brian Wasserman, Marc Bell and Jennifer Struminger were either removed or resigned in order to effectuate the Plan. There were no disagreements between any of the members of the Board being removed or resigning and the Company.

Item 1.02 Termination of a Material Definitive Agreement

On the Effective Date and pursuant to the Plan, each of the following agreements to which the Company was a party were cancelled and the holders, as described under Item 3.02 of this Current Report on Form 8-K, of debt thereunder received one share of the Preferred Stock (defined below) for each dollar owed by the Company thereunder: (i) $162,000 Original Issue Discount Senior Secured Convertible Debenture due November 3, 2015 (the "Bridge Debenture") issued by the Company to HCI (the "August 2015 Financing"); (ii) Securities Purchase Agreement, dated August 5, 2015, between the Company and HCI (the "2015 Securities Purchase Agreement"); (iii) Subsidiary Guarantee dated August 5, 2015, executed and delivered by the Company's subsidiaries in favor of HCI (the "2015 Subsidiary Guarantee"); (iv) Security Agreement dated August 5, 2015, executed and delivered by the Company and its subsidiaries in favor of HCI to secure the Company's obligations under the Bridge Indenture (the "2015 Security Agreement"); (v) Securities Exchange Agreement dated April 10, 2014 (the "Exchange Agreement") with HCI, Frank Casano ("Casano") and Scott Masterson ("Masterson") who held certain existing Senior Convertible Debentures (the "Existing Debentures") Casano and Masterson acquired $1,915,200 Senior Convertible Debentures, with a final maturity date of April 1, 2016 (the "2014 Exchange Debentures"); (vi) Securities Purchase Agreement, dated April 10, 2014, between the Company, HCI, Dillon Hill Capital, LLC ("DHC"), Dillon Hill Investment Company, LLC ("DHIC"), Marc Nuccitelli ("Nuccitelli"), Casano and Masterson (the "2014 Securities Purchase Agreement"); (vii) 8% Original Discount Senior Secured Convertible Debenture(s) due April 1, 2016 dated April 10, 2014, issued by the Company to HCI, DHC, DHIC, Nuccitelli, Casano and Masterson with an aggregate of $2,080,500 in principal amount and for a subscription amount of $1,825,000 (the "2014 New Debentures"); (viii) Subsidiary Guarantee dated April 10, 2014, executed and delivered by SGBB in favor of HCI, DHC, DHIC, Nuccitelli, Casano and Masterson (the "2014 Subsidiary Guarantee"); (ix) Security Agreement dated April 10, 2014, executed and delivered by the Company and SGBB in favor of HCI, DHC, DHIC, Nuccitelli, Casano and Masterson to secure the Company's obligations under the 2014 New Debentures (the "2014 Security Agreement"); and (x) all other documents, instruments, related writings, financing statements, security documents, warrants executed in connection therewith between the Company and/or any of the parties to the foregoing agreements (collectively, with the Bridge Debenture, the August 2015 Financing, the 2015 Securities Purchase Agreement, the 2015 Subsidiary Guarantee, the 2015 Security Agreement, the 2014 Exchange Debentures, the 2014 Securities Purchase Agreement, the 2014 New Debentures, the 2014 Subsidiary Guarantee, and the 2014 Security Agreement, the "Prepetition Loan Documents").

In addition, on the Effective Date and in accordance with the Plan, the Company's DIP Financing (as defined above), was repaid in full and the related credit agreement was terminated.

Item 1.03 Bankruptcy or Receivership.

Bankruptcy and Plan of Reorganization

The information described under the heading "*Plan of Reorganization*" in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 1.03.

Certain Information Regarding Assets and Liabilities

As of May 31, 2016, the total assets and total liabilities of the Company were approximately $853,868 and $7,595,849, respectively. Of the $7,595,849 total liabilities, $5,405,010 were converted into Preferred Stock as described under "Issuance of Preferred Stock" in Item 3.02 of this Current Report on Form 8-K. This financial information has not been audited or reviewed by the Company's independent registered public accounting firm and may be subject to future reconciliation or adjustments. This information should not be viewed as indicative of future results.

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

DIP Financing

The information described under the heading "*DIP Financing*" in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Exit Financing

The information described under the heading "*Exit Financing*" in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 2.04 Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement.

The filing of the Bankruptcy Petitions, described in Item 1.03 of this Current Report on Form 8-K, constituted an event of default that accelerated the payments of the Company's obligations under the Prepetition Loan Documents (as defined above). The Prepetition Loan Documents provided, among other things, that as a result of the Bankruptcy Petitions the principal and interest due thereunder was immediately due and payable. However, efforts to enforce such payment obligations were automatically stayed as a result of the Bankruptcy Petitions, and the creditors' rights of enforcement in respect of the Debt Instruments are subject to the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

Item 3.02 Unregistered Sales of Equity Securities

Issuance of Shares

Prior to the Effective Date, the Company was authorized to issue 300,000,000 shares of common stock, par value $0.01 (the "Former Common Stock") of which approximately 43,017,525 shares were issued and outstanding as of June 29, 2016.

On the Effective Date, all previously issued and outstanding shares of the Former Common Stock were deemed discharged, cancelled and extinguished, and, pursuant to the Plan, the Company issued, in the aggregate, 491,365 shares of common stock, par value $0.01 (the "Common Stock"), to the holders of Former Common Stock, representing 7.5% of the Company's issued and outstanding Common Stock, after taking into account full exercise of the Management Options (as defined below) and conversion of the Preferred Stock but prior to any conversion of the Exit Facility, as of the Effective Date. The shares of Common Stock were issued pursuant to Section 1145 of the Bankruptcy Code.

Further, under the Plan, upon the Effective Date certain members of the Company's management were entitled to receive options ("Management Options") to acquire an aggregate of 10%, or approximately 655,153 shares, of the Company's Common Stock, on a fully diluted basis, assuming conversion of all of the Preferred Stock but not the Exit Facility. The Company has not yet issued the Management Options, but expects to issue them sometime in the current quarter.

On the Effective Date, the Company was authorized to issue 300,000,000 shares of Common Stock under its Amended and Restated Certificate of Incorporation.

Issuance of Preferred Shares

Prior to the Effective Date, the Company was authorized to issue 5,000,000 shares of preferred stock, par value $0.01 (the "Former Preferred Stock") none of which was issued and outstanding as of August 8, 2015.

On the Effective Date, pursuant to the terms of the Plan and the Company's Amended and Restated Certificate of Incorporation, the Company filed with the Secretary of State of the State of Delaware a Certificate of Designations of Convertible Preferred Stock (the "Certificate of Designations"), designating 5,405,010 shares of preferred stock, par value $1.00 (the "Preferred Stock"). Under the Certificate of Designations, such Preferred Stock has various rights, privileges and preferences including (i) dividend payments with the Common Stock, (ii) a $1.00 per share liquidation preference and (iii) voting rights on an as converted basis. The Preferred Stock is convertible into Common Stock on a 1:1 basis and, if converted on the Effective Date, would convert into 82.5% of the Common Stock issued and outstanding on the Effective Date, after taking into account shares of Common Stock issued to holders of the Former Common Stock and the exercise of the Management Options but prior to any conversion of the Exit Facility.

HCI, DHC, DHIC, Casano, Masterson and Nuccitelli, in their capacity as prepetition secured lenders (the "Prepetition Lenders") to the Debtors, received, in the aggregate, 5,405,010 shares of Preferred Stock based on an exchange ratio of 1 share for each $1.00 owed to each such Prepetition Lender. The Preferred Stock was issued pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended.

The foregoing description of the Certificate of Designations is qualified in its entirety by reference to the complete text of the Certificate of Designation, which is filed as Exhibit 3.2 hereto and is incorporated herein by reference.

Item 3.03 Material Modification to Rights of Security Holders.

Pursuant to the Plan, on the Effective Date (i) all outstanding equity interests of the Company that were issued and outstanding prior to the Effective Date were cancelled, (ii) the Company's certificate of incorporation in effect immediately prior to the Effective Date was amended and restated in its entirety, as described in Item 5.03 below, (iii) the Company's bylaws in effect immediately prior to the Effective Date were amended and restated in their entirety as described in Item 5.03 below and (iv) the Company issued shares of Common Stock (as defined below) and Preferred Stock (as defined below), as described in Item 3.02 and Item 8.01 of this Current Report on Form 8-K.

Item 5.01 Changes in Control of the Registrant

As of the Effective Date and in accordance with the Plan, HCI had a fifty-seven percent (57%) interest, on an as converted basis, in the Company as a result of acquiring 3,352,440 shares of Preferred Stock as described under Item 3.02 of this Current Report on Form 8-K. As a result HCI had a majority of the total voting power of the Company as of the Effective Date. Further, pursuant to the Plan, on the Effective Date HCI designated three directors to the Company's Board. For a listing of the new directors of the Company that are affiliated with HCI, see Item 5.02 and Item 1.01 of this Current Report on Form 8-K.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Board Appointments

The information described under "*Board Appointments*" under Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.02.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

Amended and Restated Certificate of Incorporation

On the Effective Date and in accordance with the Plan, the Company filed an amended and restated certificate of incorporation (the "Amended and Restated Certificate of Incorporation"). The Amended and Restated Certificate of Incorporation increases the number of authorized shares of Preferred Stock of the Company to 5,405,010, from 5,000,000 and increases the par value of such Preferred Shares to $1.00 from $0.01.

Further, as discussed under Item 3.02 of this Current Report on Form 8-K, on the Effective Date the Company filed the Certificate of Designations (as defined above) with the Secretary of State of the State of Delaware. The information concerning the Certificate of Designations under "*Issuance of Preferred Stock*" under Item 3.02 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

The foregoing descriptions of the Amended and Restated Certificate of Incorporation and the Certificate of Designations are each qualified in its entirety by reference to the full text of such documents, which are incorporated herein by reference and attached hereto as Exhibit 3.1 and Exhibit 3.2, respectively.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

2.1	Order Confirming Debtors' Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code.
2.2	Disclosure Statement for Joint Chapter 11 Plan of Reorganization for SG Blocks, Inc., SG Building Blocks, Inc. and Endaxi Infrastructure Group, Inc.
2.3	Order of the Bankruptcy Court for the Southern District of New York approving the Disclosure Statement and setting Plan of Reorganization confirmation deadlines
3.1	Amended and Restated Certificate of Incorporation of SG Blocks, Inc.
3.2	Certificate of Designations of Convertible Preferred Stock for SG Blocks, Inc.
4.1	Debtor in Possession Credit Agreement, dated as of October 15, 2015, by and between SG Blocks, Inc., SG Building Blocks, Inc. and Endaxi Infrastructure Group, Inc., as borrowers, and Hillair Capital Investments L.P.
4.2	Senior Security Agreement, dated as of October 15, 2015, by and between the Company, SG Building Blocks, Inc. and Endaxi Infrastructure Group, Inc., as borrowers, and Hillair Capital Management LLC.
4.3	12% Original Issue Discount Senior Secured Convertible Debenture, dated as of June 30, 2016, by and between Hillair Capital Investments, L.P. and SG Blocks, Inc.
4.4	Security Agreement, dated as of June 30, 2016, by and between Hillair Capital Investments, SG Blocks, Inc., and SG Building Blocks, Inc.
4.5	Subsidiary Guaranty Agreement, dated as of June 30, 2016, by and between Hillair Capital Investments, L.P. and SG Building Blocks, Inc.

SIGNATURE

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

Dated: July 7, 2016

SG Blocks, Inc.

By: /s/ Brian Wasserman
Brian Wasserman
Chief Financial Officer

INDEX TO EXHIBITS

Item	Exhibit
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4.5	Subsidiary Guaranty Agreement, dated as of June 30, 2016, by and between Hillair Capital Investments, L.P. and SG Building Blocks, Inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---x	
In re:	Chapter 11
SG BLOCKS, INC., *et al.*,	Case No.: 15-12790 (JLG)
Debtors.	(Jointly Administered)
---x	

ORDER CONFIRMING DEBTORS' AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Upon the *Debtors' Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, dated as of April 15, 2016 (ECF Doc. No. 54) (the "**Plan**");[1] and upon the *Disclosure Statement for the Debtors' Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, dated as of April 15, 2016 (ECF Doc. No. 54) (the "**Disclosure Statement**"); and upon the Order entered by the Court on April 25, 2016, approving the Disclosure Statement (ECF Doc. No. 57) (the "**Approval Order**"); and upon the *Affidavit of Service* (ECF Doc. Nos. 58) evidencing service of the Approval Order, the Plan, the Disclosure Statement with related Exhibits, the Ballot for accepting or rejecting the Plan, and notice of proposed cure payments, as applicable (collectively, the "**Plan Documents**"), in compliance with the Approval Order, upon creditors, equity security holders, and other parties in interest; and upon the *Declaration of Paul Galvin in Support of Confirmation of Plan of Reorganization for SG Blocks, Inc., et al. under Chapter 11 of the Bankruptcy Code*, dated May 17, 2016 (ECF Doc. No. 61); and upon the *Debtors' Memorandum of Law in Support of Confirmation of Amended Plan of Reorganization for SG Blocks, Inc., et al. under Chapter 11 of the Bankruptcy Code* (ECF Doc. No. 62) filed with the Court; and upon the *Declaration of Gerard R. Luckman, Esq., Regarding Voting on and Tabulation of Ballots Accepting and Rejecting Debtors' Plan of Reorganization under Chapter 11 of the Bankruptcy Code*, dated May 17, 2016 (ECF Doc. No. 60); and all parties in interest having had an opportunity to be heard; and it having been determined that the requirements for confirmation of the Plan set forth in 11 U.S.C. § 1129(a), and all other relevant sections of the Bankruptcy Code have been satisfied; it is hereby

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

ORDERED, that the Plan is confirmed in the form annexed hereto as **Exhibit A**; and it is further

ORDERED, that the hearing on final applications for compensation for all professionals retained by the Debtors during the Chapter 11 Cases shall be held before the Court on **June 21, 2016 at 10:00 a.m.**; and it is further

ORDERED, that section 10.04 of the Plan is deleted in its entirety and replaced by the following:

> 10.04 Exculpation. TO THE EXTENT PERMISSIBLE UNDER BANKRUPTCY CODE §1125(e), NEITHER THE RELEASED PARTIES NOR THEIR ADVISORS, ACCOUNTANTS, AND ATTORNEYS, SHALL HAVE OR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION DURING THE PENDENCY OF THE CHAPTER 11 CASES IN CONNECTION WITH, OR ARISING OUT OF, THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, OR THE PROPERTY OR CASH TO BE DISTRIBUTED UNDER THE PLAN; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION SHALL HAVE NO EFFECT ON THE LIABILITY OF AN ENTITY WHICH RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE RESULTED FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES, AND, IN ALL RESPECTS, THE RELEASED PARTIES SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. IN ADDITION, THE EXCULPATION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.
>
> **NOTHING CONTAINED HEREIN SHALL CONSTITUTE A RELEASE OF AN INDEPENDENT CLAIM HELD BY A CREDITOR OR INTEREST HOLDER AGAINST A NON-DEBTOR ENTITY OR PERSON BASED ON ACTS OR OMISSIONS UNRELATED TO THE DEBTORS OR THE CHAPTER 11 CASES. IN ADDITION, NOTHING CONTAINED HEREIN OR IN THE PLAN SHALL RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.**

> **ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES AND SETTLEMENTS CONTAINED IN THE PLAN.**
>
> **NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, ANY CLAIM ARISING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST: (I) THE DEBTORS; (II) ANY OF THE DEBTORS' SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS; AND (III) THE RELEASED PARTIES. IN ADDITION, SUBJECT TO BANKRUPTCY CODE §§ 524 AND 1141, THE RELEASES DESCRIBED HEREIN SHALL NOT PRECLUDE POLICE, FEDERAL TAX, OR REGULATORY AGENCIES FROM FULFILLING THEIR STATUTORY DUTIES.**
>
> **THE RELEASES DESCRIBED IN THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER RELEASE SEPARATELY GIVEN, CONDITIONALLY OR UNCONDITIONALLY, BY THE DEBTORS TO ANY OTHER PERSON. ANY RELEASE GIVEN BY THE DEBTORS OR A PERSON WHICH IS PART OF OR SUBJECT TO A FINAL ORDER OF THE BANKRUPTCY COURT REMAINS IN FULL FORCE AND EFFECT AND ARE RATIFIED BY THE PLAN.**

; and it is further

ORDERED, that Bankruptcy Rule 3020(e) shall not apply to this Order and the Debtors are authorized to consummate the Plan immediately following the entry of this Order.

Dated: New York, New York
June 3, 2016

/s/ *James L. Garrity, Jr.*
Honorable James L. Garrity, Jr.
United States Bankruptcy Judge

BPOWERS/1922074.2/065531

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---x	
In re:	Chapter 11
SG BLOCKS, INC., *et al.*,	Case No.: 15-12790 (JLG)
Debtors.	(Jointly Administered)
---x	

AMENDED PLAN OF REORGANIZATION FOR
SG BLOCKS, INC., *ET AL.* UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

SilvermanAcampora LLP
Attorneys for the Debtors
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Gerard R. Luckman
Brian Powers

Dated April 12, 2016

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---x	
In re:	Chapter 11
SG BLOCKS, INC., *et al.*,	Case No.: 15-12790 (JLG)
Debtors.	(Jointly Administered)
---x	

PLAN OF REORGANIZATION FOR
SG BLOCKS, INC., *ET AL.* UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

This Plan of Reorganization is proposed and filed by SG Blocks, Inc., SG Building Blocks, Inc. and Endaxi Infrastructure Group, Inc., the above-captioned debtors and debtors-in-possession, pursuant to chapter 11 of the Bankruptcy Code.[1] The Plan provides for the reorganization and restructuring of the Debtors, the payment of Allowed Claims consistent with the distribution scheme set forth in the Bankruptcy Code, and procedures for the resolution of Disputed Claims. The Plan provides that holders of Allowed Claims against the Debtors will receive distributions of Cash on the Effective Date, and after the Effective Date, in full satisfaction of their Allowed Claims, as set forth below.

ARTICLE I

DEFINITIONS

For purposes of the Plan, the following terms shall have the meanings set forth below. Terms used in this Plan which are defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning set forth in the Bankruptcy Code or the Bankruptcy Rules unless otherwise defined in this Plan. The meaning of the defined terms shall be equally applicable to the singular and plural forms of the terms defined, unless a different meaning is clearly required by and explained in the text.

1.01 "Administrative Expense" shall mean any cost or expense of administration of the Chapter 11 Cases entitled to priority in accordance with the provisions of Bankruptcy Code §§ 503(b) and 507(a)(1), including, without limitation: (i) Fee Claims; (ii) Claims relating to goods received by the Debtors within twenty (20) days before the Petition Date in the ordinary course of the Debtors' business; and (iii) any actual, necessary costs and expenses of preserving the Debtors' Estates and of operating the Debtors' business (but only to the extent they are due or payable on or before the Effective Date).

1.02 "Affiliate" shall have the meaning set forth in Bankruptcy Code §101(2).

1.03 "Allowed" shall mean a Claim, other than an Administrative Expense or Interest in the Debtors, which is: (i) listed in the Debtors' Schedules filed in the Chapter 11 Cases as of the Effective Date, and not listed in the Schedules as disputed, contingent, unliquidated or unknown and as to which no objection to the allowance thereof is filed on or prior to the Objections Bar Date; (ii) set forth in a proof of Claim timely and properly filed in the Chapter 11 Cases on or before the date fixed by the Bankruptcy Court (or by applicable rule or statute) as the last day

[1] All capitalized terms used but not defined in the text of this Plan shall have the meanings set forth in Article I of the Plan.

for filing such proof of Claim, or late filed with leave of the Bankruptcy Court after notice and opportunity for hearing given to counsel to the Debtors, and as to which no objection to the allowance thereof is filed on or prior to the Objections Bar Date; or (iii) determined to be Allowed by a Final Order of the Bankruptcy Court. To the extent permitted under Bankruptcy Code §506(b), an Allowed Claim shall include unpaid interest on the Claim and any reasonable unpaid fees, costs or charges provided for in the agreements which govern such Claim arose. Any Claim which has been or is hereafter listed in the Schedules as contingent, unliquidated or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered an Allowed Claim and shall be expunged without further action by the Debtors or the Reorganized Debtors.

1.04 "Allowed Administrative Expense" shall mean all or that portion of any Administrative Expense which has been Allowed by a Final Order of the Bankruptcy Court.

1.05 "Allowed General Unsecured Claim" shall mean any Allowed Claim that is not an Allowed Administrative Expense, Allowed Fee Claim, Allowed Secured Claim, Allowed Priority Tax Claim, or Allowed Priority (Non-Tax) Claim.

1.06 "Allowed Priority Claim" shall mean any Allowed Claim or portion thereof entitled to priority under Bankruptcy Code §§507(a)(3) through (a)(6).

1.07 "Allowed Secured Claim" shall mean that portion of an Allowed Claim which is secured by a valid perfected lien on property of the Debtors, to the extent of the value of the interest of the holder of such Allowed Secured Claim in the property of the Debtors as determined by the Bankruptcy Court pursuant to Bankruptcy Code §506(a), together with interest, fees, costs and charges to the extent allowed by the Bankruptcy Court under Bankruptcy Code §506(b).

1.08 "Allowed Priority Tax Claim" shall mean any Allowed Claim or portion thereof entitled to priority under Bankruptcy Code §507(a)(8).

1.09 "Avoidance Actions" shall mean (a) any and all claims, suits and causes of action now held or hereafter acquired by the Debtors, the Estates, the Reorganized Debtors, or the Debtors' creditors under Bankruptcy Code §§544, 547, 548, 549, 550, or 553 and (b) any claim against any transferee of a transfer avoidable under Bankruptcy Code §549 received from the Debtors from and after the Petition Date, but prior to the Effective Date.

1.10 "Bankruptcy Code" shall mean title 11 of the United States Code, as amended.

1.11 "Bankruptcy Court" shall mean the United States Bankruptcy Court for the Southern District of New York, in which the Debtors' Chapter 11 Cases are pending, and the United States District Court for the Southern District of New York to the extent that in respect of the Chapter 11 Cases the District Court may have withdrawn reference, shall have determined to exercise original jurisdiction, or shall have sole authority to enter a final order or judgment.

1.12 "Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure.

1.13 "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday as defined in Bankruptcy Rule 9006(a).

1.14 "Casano" shall mean Frank Casano, one of the Debtors' prepetition secured lenders.

1.15 "Cash" shall mean cash and cash equivalents, and other readily marketable securities or instruments, including, but not limited to, bank deposits, checks and other similar items.

1.16 "Chapter 11 Cases" shall mean the Debtors' jointly administered chapter 11 cases filed in the Bankruptcy Court, Case Nos. 15-12790 (JLG), 15-12791 (JLG), and 15-12792 (JLG), administered under Case No. 15-12790 (JLG).

1.17 "Claim" shall mean a claim against the Debtors, as defined in Bankruptcy Code §101(5).

1.18 "Claimant" shall mean the holder of a Claim.

1.19 "Class" shall mean any class into which Allowed Claims and Allowed Interests are classified pursuant to Article II of the Plan.

1.20 "Confirmation Date" shall mean the date the Confirmation Order is entered in the Chapter 11 Case.

1.21 "Confirmation Hearing" shall mean the hearing or hearings held by the Bankruptcy Court to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.22 "Confirmation Order" shall mean an Order of the Bankruptcy Court confirming the Plan in accordance with Bankruptcy Code §1129.

1.23 "Creditor" shall have the meaning set forth in Bankruptcy Code §101(10).

1.24 "Debtors" shall mean SG Blocks, Inc., SG Building Blocks, Inc., and Endaxi Infrastructure Group, Inc., as debtors and debtors in possession.

1.25 "DHIC" shall mean Dillon Hill Investment Company, LLC, one of the Debtors' prepetition secured lenders.

1.26 "Dillon" shall mean Dillon Hill Capital, LLC, one of the Debtors' prepetition secured lenders.

1.27 "DIP Financing Order" shall mean the Bankruptcy Court's final order authorizing the Debtors to use Prepetition Lender's cash collateral and to obtain debtor in possession financing from the DIP Lender (ECF Doc. No. 25).

1.28 "DIP Lender" shall mean Hillair Capital Investments L.P. in its capacity as debtor in possession lender to the Debtors pursuant to a Debtor in Possession Credit Agreement, Senior Security Agreement, and the DIP Financing Order.

1.29 "Disallowed Claim" shall mean any Claim or portion of a Claim which has been disallowed by a Final Order of the Bankruptcy Court.

1.30 "Disputed Claim" shall mean any Claim, proof of which was timely and properly filed, and (a) which is listed on the Schedules as unliquidated, disputed, or contingent, and which has not been resolved by written agreement between the Debtors and the Claimant or by an order of the Bankruptcy Court, (b) which is subject to a dispute to the extent that the Debtors or the Reorganized Debtors have asserted a claim against the holder of the Disputed Claim, or (c) as to which the Debtors have interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order. Prior to the filing of an objection to a Claim, or the expiration of the time within which to object to such Claim set forth in the Plan or otherwise established by order of the Bankruptcy Court, for purposes of the Plan, a Claim shall be considered a Disputed Claim if (x) the amount of the Claim specified in the proof of Claim exceeds the amount of the Claim scheduled by the Debtors as other than disputed, contingent or unliquidated, or (y) the Claim is not listed on the Schedules.

1.31 "Disputed Claims Reserve" shall mean the reserves to be established by the Debtors or the Reorganized Debtors on account of Disputed Administrative Expenses, Disputed Priority Claims, and Disputed Unsecured Claims to be used to make pro rata Distributions to holders of Disputed Administrative Expenses, Disputed Claims and Undetermined Claims in the event they become Allowed Claims.

1.32 "Distribute" or "Distribution" shall mean a payment by the Debtors or the Reorganized Debtors under the terms of the Plan.

1.33 "Distribution Date" shall mean any date, subsequent to the Effective Date, on which a Distribution under the Plan is to be made to the holders of Allowed Claims.

1.34 "Effective Date" shall mean the first day on which the Confirmation Order has become a Final Order and on which all of the conditions to the Effective Date in the Plan have been satisfied or waived.

1.35 "Effective Date Payment" shall mean the payment from the funds made available under the Exit Facility to pay the obligations to the DIP Lender, Administrative Expenses, any priority claims, and an initial fifty (50%) percent distribution to General Unsecured Creditors on Allowed General Unsecured Claims.

1.36 "Endaxi" shall mean Endaxi Infrastructure Group, Inc.

1.37 "Estates" shall mean the Debtors' chapter 11 estates created on the Petition Date under Bankruptcy Code §541.

1.38 "Exit Facility" shall mean the senior secured convertible working capital facility in the approximate amount of $1.1 million provided to the Reorganized Debtor by Hillair to refinance the obligations to the DIP Lender, pay Administrative Expenses, provide an initial fifty (50%) percent distribution to General Unsecured Creditors and fund anticipated working capital needs. The Exit Facility shall be convertible into shares of the Debtor's stock on the basis of 1.25 shares per $1.00 of convertible debt. The Exit Facility shall be subordinate to the specific liens granted to IPFS Corporation on account of insurance premium financing entered into by the Debtors.

1.39 "Fee Claims" shall mean claims by professionals retained by the Debtors during the Chapter 11 Cases for the payment of fees and the reimbursement of expenses incurred prior to the Effective Date.

1.40 "Final Order" shall mean: (i) an order or a judgment of the Bankruptcy Court; or (ii) a stipulation or other agreement entered into which is "so ordered" by the Bankruptcy Court, in either case the operation or effect of which has not been reversed, stayed, modified or amended and as to which (x) any appeal that has been taken has been finally determined or dismissed, or (y) the time to appeal or seek reconsideration has expired by reason of statute or otherwise and as to which no appeal or petition for review, *certiorari* or reconsideration has been taken or is pending (or if such appeal or petition has been granted, it has been finally decided), as a result of which such order, judgment, stipulation or agreement shall have become final in accordance with applicable law.

1.41 "General Unsecured Claim" means an Allowed Claim that is not an Administrative Expense, a Priority (Non-Tax) Claim, Priority Tax Claim, Fee Claim, or Secured Claim.

1.42 "Hillair" shall mean Hillair Capital Investments L.P., in its capacity as prepetition secured lender.

1.43 "Interest" shall mean any rights of a shareholder in respect of an equity interest in each of the Debtors.

1.44 "Lien" shall have the meaning set forth in Bankruptcy Code §101(37).

1.45 "Masterson" shall mean Scott Masterson, one of the Debtors' prepetition secured lenders.

1.46 "Nuccitelli" shall mean Marc Nuccitelli, one of the Debtors' prepetition secured lenders.

1.47 "Objections Bar Date" shall mean the deadline for the Debtors or the Reorganized Debtors to file objections to Claims, which deadline shall be the first Business Day that is ninety (90) days after the Effective Date of the Plan.

1.48 "Person" shall have the meaning set forth in Bankruptcy Code §101(41).

1.49 "Petition Date" shall mean October 15, 2015.

1.50 "Prepetition Lender" shall collectively mean Hillair, Dillon, DHIC, Casano, Masterson, and Nuccitelli, in their role as prepetition secured lender to the Debtors.

1.51 "Prepetition Lender's Lien" shall mean the lien granted to the Prepetition Lender on account of the Prepetition Lender Secured Claim contained in the relevant loan documents evidencing the Prepetition Lender Secured Claim, and in the DIP Financing Order.

1.52 "Prepetition Lender Secured Claim" shall mean the Allowed Secured Claim of Prepetition Lender, which is secured by a valid first-priority lien on substantially all of the Debtors' assets.

1.53 "Plan" shall mean this Plan of Reorganization, as it may be amended or modified.

1.54 "Priority (Non-Tax) Claims" shall mean any Claim that is entitled to priority status in accordance with Bankruptcy Code §507(a), other than Priority Tax Claims and Administrative Expenses.

1.55 "Priority Tax Claims" shall mean any Claim for taxes entitled to priority status in accordance with Bankruptcy Code §§502(i) or 507(a)(8), but specifically excludes any penalty assessed with respect to such taxes.

1.56 "Pro Rata Share" shall mean the proportion that the Allowed Claim bears to the sum of all Allowed Claims, Disputed Claims and Undetermined Claims of that particular Class or in the case of Interests the proportion of Interests held by such holder in relation to the sum of al outstanding Interests.

1.57 "Released Parties" shall have the meaning set forth in Article X of the Plan.

1.58 "Released Claims" shall mean the claims released under Article X of the Plan.

1.59 "Reorganized Debtors" shall mean the Debtors after the Effective Date.

1.60 "Schedules" shall mean the schedules of assets and liabilities, lists and statement of financial affairs and executory contracts filed by the Debtors with the Bankruptcy Court, as they may be amended pursuant to the Bankruptcy Rules.

1.61 "Securities Act" shall mean the Securities Act of 1933, as amended.

1.62 "Unclaimed Property" shall mean any Cash (together with any interest earned thereon) unclaimed on the later of the 180th day following the Effective Date or the last Distribution Date. Unclaimed Property shall include checks (and the funds represented thereby): (i) which have been returned as undeliverable without proper forwarding addresses; (ii) which

have not been paid; or (iii) which were not mailed or delivered because of the absence of a proper address for the Claimant.

1.63 "Undetermined Claim" shall mean any Claim that is (i) a Disputed Claim or (ii) an unliquidated or contingent Claim.

1.64 "Unsecured Creditor" shall mean the holder of an Unsecured Claim.

1.65 "U.S. Trustee" shall mean the United States Trustee for Region 2.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

2.01 General Rules of Classification. A Claim or Interest is classified in a particular Class for voting and distribution purposes only to the extent the Claim or Interest qualifies within the description of that Class, and is classified in other Classes to the extent the Claim or Interest qualifies within the description of such Classes.

2.02 Administrative Expenses and Priority Tax Claims. Administrative Expenses and Priority Tax Claims have not been classified and are excluded from the Classes of Claims in accordance with Bankruptcy Code §1123(a)(1).

2.03 Satisfaction of Claims and Interests. The treatment to be provided for Allowed Claims and Interests under this Plan and the consideration provided under this Plan shall be in full satisfaction, settlement, release and discharge of all Claims and Interests against the Debtors and their property.

2.04 Bar Dates for Claims. Pursuant to the Bankruptcy Court's Order, dated December 18, 2015 (ECF Doc. No. 33), all non-governmental unit Claims against the Debtors, including claims under Bankruptcy Code §503(b)(9) must be filed on or before January 25, 2016, and all Claims of governmental units must be filed on or before April 12, 2016. Claims arising from the rejection of executory contracts and unexpired leases shall be governed by the specific orders of the Bankruptcy Court regarding the assumption or rejection of executory contracts and unexpired leases and Article VI of the Plan.

2.05 Bar Date for Fee Claims. The Confirmation Order, or the order scheduling the Confirmation Hearing, shall provide a deadline for the filing of requests for payment of Fee Claims incurred prior to the Confirmation Date. Any Person that fails to file an application for the payment of professional fees and expenses on or before the time and date established in the Confirmation Order or the order scheduling the Confirmation Hearing shall be forever barred from seeking payment or reimbursement from the Debtors, their Estates or the Reorganized Debtors. Counsel for the DIP Lender shall not be required to file an application for payment of its legal fees and expenses, other than in accordance with paragraph 14 of the DIP Financing Order.

2.06 Acceptance of Classification. Any holder of a Claim or Interest who fails to object in writing to the classification of Claims and Interests provided in the Plan, and who has not filed an objection with the Bankruptcy Court and served the objection upon counsel to the Debtors, counsel to Prepetition Lender and the U.S. Trustee at least ten (10) days prior to the Confirmation Hearing shall be deemed to have accepted the classification set forth in the Plan.

2.07 Classification. For purposes of the Plan, all Allowed Claims shall be placed in the following Classes:

- Class 1 (Allowed Priority (Non-Tax) Claims)
- Class 2 (Allowed DIP Lender Secured Claim)

- Class 3 (Allowed Prepetition Lender Secured Claim)
- Class 4 (General Unsecured Claims)
- Class 5 (Interests in the Debtors)

ARTICLE III

TREATMENT OF CLASSES

3.01 Administrative Expenses. Administrative Expenses are not impaired. Except with respect to Administrative Expenses Allowed under Bankruptcy Code §503(b)(9), which shall be paid as soon as reasonably practicable after the Effective Date or upon such other terms as may be agreed to by the holder thereof and the Debtors, Allowed Administrative Expenses, including Fee Claims, shall be paid by the Debtors or the Reorganized Debtors on the later to occur of (a) the Effective Date, and (b) the date such Claim becomes Allowed by a Final Order of the Bankruptcy Court, or as soon as practicable thereafter, or upon such other terms as may be agreed to by the holder thereof and the Debtors. In the event of any subsequent conversion of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, all payments on account of any Allowed Administrative Expenses shall be deemed to have been made in the ordinary course of the Debtors' business and shall not be deemed to be avoidable transfers under Bankruptcy Code §549.

3.02 U.S. Trustee Fees. Statutory fees, and any applicable interest thereon, are all fees payable pursuant to Chapter 123 of Title 28, United States Code, including, but not limited to, all fees required to be paid by 28 U.S.C. §1930(a)(6) plus any interest due and payable under 31 U.S.C. §3717 ("**U.S. Trustee Fees**"). U.S. Trustee Fees will accrue and be timely paid until the Case is closed, dismissed, or converted to another chapter under the Bankruptcy Code. Any U.S. Trustee Fees owed on or before the Effective Date of this Plan will be paid in full on the Effective Date of the Plan.

3.03 Priority Tax Claims. Priority Tax Claims are not impaired. All Allowed Priority Tax Claims shall be paid on the Effective Date unless such claims are Allowed in an amount significantly greater than estimated or in an amount that would jeopardize a recovery to unsecured creditors, then in that case Priority Tax Claims will be paid over a five (5) year period in accordance with Bankruptcy Code §1129(a), at the Federal Judgment Rate. Holders of Priority Tax Claims shall not be entitled to vote on the Plan.

3.04 Class 1 Priority (Non-Tax) Claims. Allowed Priority (Non-Tax) Claims shall be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable. The Debtors do not believe any such claim exists. In accordance with Bankruptcy Code § 1126(f), holders of Class 1 Claims shall not be entitled to vote on the Plan and shall be deemed to have accepted the Plan. Class 1 Claims are not impaired.

3.05 Class 2 DIP Lender Secured Claim shall be paid in full on the Effective Date from the Effective Date Payment.

3.06 Class 3 Prepetition Lender Secured Claim. Holders of the Allowed Prepetition Lender Secured Claim, shall receive one hundred (100%) percent of a newly issued convertible preferred stock on the basis of one share of preferred stock per dollar of Allowed Petition Lender Secured Claim. The preferred stock shall vote with the common stock of the Reorganized Debtor on an as converted basis, shall receive dividends with the common stock, and shall have a $1.00 per share liquidation preference. The preferred stock is convertible into common stock on a 1:1 basis and, if converted on the Effective Date, would convert into 82.5% of the common stock of the Reorganized Debtor, after taking into account common stock issued to holders of Class 5 Interests and the Management Options (defined below), but before any

conversion of the Exit Facility. On the Effective Date, the Reorganized Debtor's management will receive options (the "Management Options") to acquire 10% the Reorganized Debtor's new common stock, calculated on a fully diluted basis assuming conversion of all of the preferred stock but not the Exit Facility. The Management Options will be subject to certain vesting conditions. The holder of the Exit Facility also retains conversion rights that will dilute the ownership rights of holders of Class 3 Claims and Class 5 Interests. Hillair shall be entitled to designate three members of the Reorganized Debtors' Board of Directors. Dillon, DHIC, Casano, Masterson and Nuccitelli will be granted Board of Directors observation rights by the Reorganized Debtor, subject to certain share ownership requirements to be determined by the Reorganized Debtor. All shares of new common or preferred stock issued under the Plan will be issued without registration under the Securities Act or any similar federal, state, or local law in reliance upon either section 1145 of the Bankruptcy Code or Section 4(a)(2) of the Securities Act, as amended. The Class 3 Prepetition Lender Secured Claim is impaired.

3.07 Class 4 General Unsecured Claims. Class 4 Claims are comprised of the Allowed Claims of General Unsecured Creditors. Each holder of an Allowed General Unsecured Claim shall receive a Distribution of one hundred (100%) percent of its Allowed Claim, plus post-petition interest calculated at the Federal judgment rate, payable as follows: fifty (50%) percent of its Allowed Claim on the Effective Date as part of the Effective Date Payment, twenty five (25%) percent at the conclusion of the next full fiscal quarter of the Reorganized Debtor after the Effective Date, and the remaining twenty five (25%) percent of its Allowed Claim, plus any post-petition interest owed, at the conclusion of the next full fiscal quarter of the Reorganized Debtor after the Effective Date, and the remaining twenty five (25%) percent of its Allowed Claim at the conclusion of the second full fiscal quarter of the Reorganized Debtor after the Effective Date. Class 4 Claims are impaired.

3.08 Class 5 Interests. Shares of stock held by each holder of Interests in the Debtors shall be cancelled and replaced by such holder's pro rata share of 100% of the new common stock in the Reorganized Debtors that is outstanding at the Effective Date. Such common stock ownership in the Reorganized Debtor is subject to dilution by conversion of the preferred stock as described in Section 3.06. Assuming 100% of such preferred stock is converted and taking into account the Management Options as if fully exercised, the holders of the Class 5 Interests would hold 7.5% of the common stock of the Reorganized Debtor. The ownership interest of the holders of the Class 5 Interests is subject to further dilution upon the conversion of the Exit Facility into new common stock. Class 5 Interests are impaired.

ARTICLE IV

CLAIMS AND INTERESTS IMPAIRED UNDER THE PLAN

4.01 Claims and Interests in Classes 3, 4 and 5 are impaired under the Plan, and are entitled to vote on the Plan. Claims in Classes 1 and 2 are not impaired under the Plan, and are not entitled to vote on the Plan.

4.02 Pursuant to Bankruptcy Code §1126(c), a Class of Claims shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the holders of Allowed Claims in such Class that vote on the Plan. Pursuant to Bankruptcy Code §1126(d), holders of Interest in Class 5 shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in amount of the Allowed Interests of such Class 5.

4.03 Classes 3, 4 and 5 are currently entitled to vote to accept or reject the Plan. To the extent that any Class entitled to vote rejects the Plan, the Debtors intend to seek confirmation of the Plan in accordance with Bankruptcy Code §1129(b).

4.04 The Plan shall serve as a motion by the Debtors seeking entry of an order substantively consolidating each of the Estates of the Debtors into a single consolidated Estate solely for the limited purposes of voting, confirmation, and distribution. For the avoidance of doubt, the Plan shall not serve as a motion by the Debtors seeking entry of an order substantively consolidating the Debtors for any other purposes. **Moreover, any alleged defaults under any applicable agreement with the Debtors, the Reorganized Debtors, or their respective affiliates arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date.**

ARTICLE V

MEANS FOR IMPLEMENTATION OF THE PLAN

5.01 Payments on the Effective Date. No later than two (2) Business Days before the Confirmation Hearing, the Debtors shall provide proof that they will have sufficient funds to make the Effective Date Payment required under the Plan.

The payments under the Plan will be made from (a) Effective Date Payment, and (b) the Cash derived from the Debtors' operations and/or the Reorganized Debtor's operations.

Except for Allowed Administrative Expenses held pursuant to Bankruptcy Code §503(b)(9), which shall be paid as soon as reasonably practicable after the Effective Date or upon such other terms as may be agreed to by the holder thereof and the Debtors, on the Effective Date the Debtors shall have the Cash necessary to pay in full Allowed Administrative Expenses, including Allowed Fee Claims (except to the extent that the holders of Administrative Expense or Fee Claims agree to different treatment), except as otherwise provided in the Plan, Allowed Priority (Tax) Claims and Priority (Non-Tax) Claims.

5.02 Payments after the Effective Date. To the extent necessary to pay Allowed Claims under the Plan, the Reorganized Debtor will pay the remaining fifty (50%) percent of the Allowed Class 4 Claims from their cash flow in accordance with the Plan.

5.03 Release of Avoidance Actions. On the Effective Date, the Debtors, on behalf of themselves and their Estates shall release any and all Avoidance Actions and the Debtors and the Reorganized Debtors, and any of their successors and assigns and any entity acting on behalf of the Debtors or the Reorganized Debtors shall be deemed to have waived the right to pursue any and all Avoidance Actions.

5.04 Reserves. On the Effective Date, or as soon thereafter as is reasonably practical, the Debtors shall establish and maintain adequate reserves for Disputed Claims.

On the later to occur of (a) the Effective Date, and (b) the date such Claim becomes Allowed by a Final Order of the Bankruptcy Court, or as soon thereafter is reasonably practicable, the Debtors shall use available Cash to pay in full, or establish appropriate reserves for Allowed Administrative Expenses, including Allowed Fee Claims, except as otherwise agreed to by the holder thereof and the Debtors. The Debtors shall pay all Priority Tax Claims, and Priority (Non-Tax) Claims, in accordance with Article III of the Plan.

5.05 Investments by the Debtors. All Cash held by the Debtors, whether held in investment accounts, bank accounts, any Disputed Claims Reserve, or any escrow accounts, shall be invested in accordance with Bankruptcy Code §345 in a financial institution that is an authorized depository under the U.S. Trustee Operating Guidelines.

5.06 Delivery of Distributions. Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the holders of Allowed Claims shall be made at (a) the address of each holder as set forth in the Schedules, unless superseded by the address set

forth on proofs of Claim filed by such holder, or (b) the last known address of such holder if no proof of Claim is filed or if the Debtors have been notified in writing of a change of address.

5.07 Undeliverable Distributions and Unclaimed Property. If any distribution made by the Debtors or the Reorganized Debtor, as applicable, is returned as undeliverable, the Debtors or the Reorganized Debtors, as applicable, may, in their sole discretion, make such efforts to determine the current address of the Holder of the Claim with respect to which the distribution was made, but no distributions to any Holder of an Allowed Claim will be made until the Debtors or the Reorganized Debtors, as applicable, have determined the current address of the Holder of such Allowed Claim, at which time the distribution will be made without interest. The Debtors or the Reorganized Debtors, as applicable, shall have sole discretion to determine how to make distributions in the most efficient and cost-effective manner. Amounts in respect of any undeliverable distributions made by the Debtors or the Reorganized Debtor, as applicable, shall be returned to, and held in trust by, the Debtors or the Reorganized Debtor, as applicable, until the distributions are claimed, or are deemed to be Unclaimed Property upon the expiration of six (6) months from the date of the return of the undeliverable distribution. Unclaimed Property shall revert to the Reorganized Debtors in accordance with the provisions of the Plan.

5.08 Record Date for Distributions. Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the date of the entry of the Confirmation Order will be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the date of the entry of the Confirmation Order. The Debtors and Reorganized Debtors shall have no obligation to recognize any transfer of any Claim occurring after the date of the entry of the Confirmation Order. In making any Distribution with respect to any Claim, the Debtors shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Person that is listed on the proof of Claim filed with respect thereto, or on the Schedules, as the holder thereof as of the close of business on the date of the entry of the Confirmation Order, and upon such other evidence or record of transfer or assignment that are known to the Debtors as of the date of the entry of the Confirmation Order.

5.09 Distributions to Holders of Claims – Generally.

(a) Distributions on Account of Allowed Claims Only. Except as otherwise provided in this Plan, Disputed Claims shall not be entitled to any Distribution until such Disputed Claim becomes an Allowed Claim. All Claims of any Person from which property is sought by the Debtors, or the Reorganized Debtors, as applicable, under Bankruptcy Codes §§ 542, 543, 550, or 553, or that the Debtors, or the Reorganized Debtors, allege is a transferee of a transfer that is avoidable under Bankruptcy Code §§ 544, 545, 547, 548, 549, or 553 shall be disallowed if such Person or transferee has failed to turnover such property to the Reorganized Debtors.

(b) Method of Cash Distributions. Any payment of Cash to be made pursuant to the Plan will be in U.S. dollars and may be made by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

(c) Distributions on Non-Business Days. Any payment or Distribution due on a day other than a Business Day may be made, without interest, on the next Business Day.

(d) No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution (of a value set forth herein or in the Disclosure Statement) in excess of the Allowed amount of such Claim.

(e) Interest on Claims. Except as specifically provided for in the Plan or the Confirmation Order, interest shall not accrue on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim, other than the Claim of the DIP Lender in accordance with the DIP Financing Order. Interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Petition Date to the date a final Distribution is made thereon if and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided herein or in a Final Order of the Bankruptcy Court, no prepetition Claim shall be allowed to the extent that it is for postpetition interest or other similar charges.

(f) Disputed Payments. If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Reorganized Debtors may, in lieu of making such Distribution to such Person, make such Distribution into an escrow account or hold such Distribution in reserve until the disposition thereof shall be determined by Bankruptcy Court order, or by written agreement among the interested parties to such dispute.

(g) Withholding Taxes. Any federal or state withholding taxes or other amounts required to be withheld under any applicable law may be deducted and withheld from any Distributions under the Plan. All Persons holding Claims shall be required to provide any information necessary to effect the withholding of such taxes. The Reorganized Debtors may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Reorganized Debtors to the appropriate authority. If the holder of an Allowed Claim fails to provide the information necessary to comply with any withholding requirements of any governmental unit within ninety (90) days after the date of first notification to the holder of the need for such information, or for the Cash necessary to comply with any applicable withholding requirements, then such holder's Distribution shall be treated as Unclaimed Property herein or the amount required to be withheld may be so withheld and turned over to the applicable authority.

(h) Time Bar to Cash Payments by Check. Checks issued by the Reorganized Debtors on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to this Section may be made directly to the Reorganized Debtors by the holder of the Allowed Claim to whom the check was originally issued. Any Claim with respect to such voided check must be made in writing, on or before the later of the first anniversary of the Effective Date, or the six (6) month anniversary of the date on which the Distribution was made. After that date, all Claims with respect to voided checks shall be discharged and forever barred and the proceeds of those checks shall be deemed Unclaimed Property in accordance with Bankruptcy Code §347(b) and be distributed as provided herein.

(i) No Payments of Fractional Dollars. Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole dollar.

(j) No Payment of Fractional Shares. Notwithstanding any other provision of the Plan to the contrary, no payment of fractional shares of stock shall be made pursuant to the Plan. Whenever any payment of a fraction of a share of stock under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole share.

(k) Minimum Distributions. Notwithstanding anything herein to the contrary, the Reorganized Debtors shall not be required to make distributions or payments of less than $25.00, and shall not be required to make partial distributions or payments of fractions of dollars. Any Holder of an Allowed Claim whose aggregate distribution under this Plan is less than $25.00 shall forfeit, at the option of the Reorganized Debtors, such amount to, and such amount shall vest in, the Debtors for distribution in accordance with the terms of the Plan.

(l) Setoff and Recoupment. The Reorganized Debtors may, but shall not be required to, setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature that the Reorganized Debtors or the Estates may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Estates, or the Reorganized Debtors, of any right of setoff, recoupment claims, rights or Avoidance Actions that the Debtors, the Estates, or the Reorganized Debtors, or any of their successors may possess against such holder. Any setoff or recoupment shall only be made after the affected creditor is provided not less than five days notice.

5.10 Quarterly Reports. Until the Chapter 11 Cases are closed, the Reorganized Debtors shall file quarterly reports setting forth (a) the status of Distributions to holders of Allowed Class 4 Claims, and (b) the status of any Avoidance Actions. The quarterly reports shall be filed on or before the 15th day of July, October, January and April. In addition, the Reorganized Debtors shall maintain an accurate register of the General Unsecured Claims.

5.11 Vesting of Assets. As of the Effective Date, pursuant to provisions of Bankruptcy Code §§ 1141(b) and (c), all property and assets of the Debtors shall be transferred to and shall vest in the Reorganized Debtors free and clear of all Liens, Claims and Interests, except as otherwise expressly provided in this Plan, and the Confirmation Order.

5.12 Continuing Existence. From and after the Effective Date, the Reorganized Debtors will continue in existence and shall continue normal operations of their business as corporations under applicable law.

ARTICLE VI

EXECUTORY CONTRACTS AND LEASES

6.01 Any executory contract or unexpired lease of the Debtors which has not been assumed or rejected by Final Order of the Bankruptcy Court, or which is not the subject of a pending motion to assume or reject on the Confirmation Date, shall be deemed assumed by the Debtors on the Effective Date. Simultaneously with service of the Plan and Disclosure Statement, the Debtors shall provide a notice to all counter-parties to executory contracts proposed to be assumed, substantially in the former annexed hereto as **Exhibit 1**. Such counter-parties shall have until seven (7) days prior to the Confirmation Hearing to file an objection to the proposed cure amount provided in such notice. All objections to cure amounts shall be heard at the Confirmation Hearing. To the extent that the D&O Liability Insurance Policies are considered to be Executory Contracts, notwithstanding anything in the Plan to the contrary, effective as of the Effective Date, the Reorganized Debtors shall be deemed to have assumed all unexpired D&O Liability Insurance Policies with respect to the Debtors' directors, managers, officers, and employees serving on or prior to the Petition Date pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtors' assumption of each of the unexpired D&O Liability Insurance Policies. On the Effective Date, the Debtors shall be deemed to have assumed all of the Debtors insurance policies.

6.02 Any entity with a Claim that arises from the rejection of an executory contract or unexpired lease must file its Claim within thirty (30) days after the later of the date of the order rejecting the executory contract or unexpired lease and the Confirmation Date, and shall have the same rights as a Class 4 Claimant to the extent such Claim becomes an Allowed General Unsecured Claim. **Any Claims arising from the rejection of an executory contract or unexpired lease not filed with the Bankruptcy Court within such time will be automatically treated as a Disallowed Claim, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Reorganized Debtors, the Estates, or property of the foregoing parties, without the need for any objections by the Debtors or the Reorganized Debtors, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other entity, and any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or any proof of Claim to the contrary.**

ARTICLE VII

PROCEDURE FOR RESOLVING DISPUTED CLAIMS

7.01 Disputed Claim Reserves. Except as provided for below, the Debtors shall set aside and reserve for the benefit of each holder of a Disputed Claim an amount equal to the Distributions to which the holder of such Disputed Claim would be entitled if such Disputed Claim were an Allowed Claim, in an amount equal to the amount of such Claim as estimated by the Bankruptcy Court pursuant to an order. Such reserved amounts, and the difference between the amount so reserved for each such Claim and the amount of federal, state and local taxes paid by the Debtors with respect to such Claim shall constitute the maximum Distribution amount to which the holder of such Claim may ultimately become entitled to receive.

7.02 Distributions to Holders of Allowed Claims. After the Effective Date, the Reorganized Debtors shall make one or more Distributions to holders of Allowed Claims in accordance with the Plan.

(i) Distributions on Disputed Claims. No Distributions shall be made with respect to a Disputed Claim until the resolution of such dispute by agreement with the Debtors, the Reorganized Debtors, or Final Order. On or as soon as reasonably practicable after the first Business Day of the next calendar quarter after a Disputed Claim becomes an Allowed Claim, the Debtors shall distribute to the holder thereof Cash, from the Disputed Claims Reserve, in an amount equal to the aggregate amount of Cash that would have been distributed to such holder in respect of such Claim had such Claim been an Allowed Claim, in the amount in which it is ultimately allowed.

(ii) Treatment of Excess Cash in Disputed Claims Reserve. To the extent a Disputed Claim becomes a Disallowed Claim or is reclassified, any Cash previously reserved for such portion of such Disputed Claim shall be distributed in accordance with the Plan. To the extent all payments required under the Plan have already been made, Cash previously reserved for Disputed Claims shall be paid to the Reorganized Debtor in accordance with Section 5.11 of the Plan.

7.03 Resolution of Disputed Claims. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, after the Confirmation Date the Reorganized Debtors shall have the right to make and file objections to all Claims, and shall serve a copy of each objection upon the holder of the Claim to which the objection is made, as soon as practicable, but in no event later than the Objections Bar Date. From and after the Confirmation Date, all objections

shall be litigated to a Final Order except to the extent the Reorganized Debtors elect to withdraw any claim objection, or the Reorganized Debtors and the claimant elect to compromise, settle or otherwise resolve any claim objection, in which event they may settle, compromise or otherwise resolve any Disputed Claim without further approval of the Bankruptcy Court. A Disputed Claim as to which no objection is filed by the Objections Bar Date shall become an Allowed Claim.

7.04 Procedure for Omnibus Objections to Claims. The Debtors and the Reorganized Debtors are permitted to file omnibus objections to claims (an "**Omnibus Objection**") on any grounds, including but not limited to those grounds specified in Bankruptcy Rule 3007(d). For claims that have been transferred, a notice shall be provided only to the person or persons listed as being the owner of such claim on the Debtors' claims register as of the record date as provided for in Article V of the Plan. The notice of an Omnibus Objection shall include a copy of the relevant Omnibus Objection but not the exhibits thereto listing all claims subject to the objection thereby; rather, the notice shall (i) identify the particular claim or claims filed by the claimant that are the subject of the Omnibus Objection, (ii) provide a unique, specified and detailed basis for the objection, (iii) explain the proposed treatment of the claim, (iv) notify such claimant of the steps that must be taken to contest the objection, and (v) otherwise comply with the Bankruptcy Rules.

7.05 Maintenance of Disputed Claims Reserve. To the extent that the property placed in a Disputed Claims Reserve consists of Cash, that Cash shall be deposited in an interest-bearing account in a financial institution that is an authorized depository under the U.S. Trustee Operating Guidelines. The Disputed Claims Reserve shall be closed and extinguished by the Reorganized Debtors when all Distributions and other dispositions of Cash or other property required to be made under the Plan from such reserves will have been made in accordance with the terms of the Plan.

ARTICLE VIII

RETENTION OF JURISDICTION

8.01 The Bankruptcy Court shall retain jurisdiction over the Debtors, the Reorganized Debtors, and the Chapter 11 Cases pursuant to chapter 11 of the Bankruptcy Code and for the purposes set forth in Bankruptcy Code §1127(b), including, without limitation, with respect to the following matters:

(a) to enable the Debtors or the Reorganized Debtors, as applicable, to prosecute any Avoidance Actions;

(b) to hear and determine any claim or cause of action belonging to the Estates, and any disputes concerning the classification, allowance, or estimation of any Claim;

(c) to resolve any disputes concerning any funds held in the Disputed Claims Reserve;

(d) to hear and determine all disputed issues relating to a security or ownership interest in any property of the Estates, or in any proceeds thereof;

(e) to hear and determine all Claims arising out of any agreement entered into by the Debtors after the Petition Date but prior to the entry of the Confirmation Order;

(f) to recover all assets and property of the Debtors wherever located;

(g) to alter, modify and amend the Plan pursuant to Bankruptcy Code §1127 or to remedy any defect, cure any omissions, or reconcile any inconsistency in the

Plan or Confirmation Order as may be necessary to carry out the purpose and intent of the Plan, and to extent authorized by the Bankruptcy Code or Bankruptcy Rules;

(h) to hear and determine such other matters as may be provided for in the Confirmation Order and for the purposes set forth in Bankruptcy Code §§1127(b) and 1142, or in Bankruptcy Rules 1019 and 3020(d);

(i) to hear and determine all applications for compensation of professionals for services rendered and expenses incurred through the Confirmation Date, and thereafter to hear and determine any objections to compensation of professionals;

(j) to hear and determine any and all pending applications, adversary proceedings, contested matters and litigated matters;

(k) to hear and determine any disputed issues with respect to the payments to be made under the Plan;

(l) to enter orders that are necessary or appropriate to carry out the provisions of the Plan, including orders interpreting the provisions of the Plan;

(m) to enter a Final Order or decree concluding the Debtors' Chapter 11 Cases; and

(n) to determine such other matters as may be provided for in the Confirmation Order, or as may be authorized under the provisions of the Bankruptcy Code.

ARTICLE IX

CONFIRMATION AND EFFECTIVE DATE

9.01 Conditions Precedent to Confirmation. The following are the conditions precedent to the Confirmation of the Plan:

(a) The Debtors shall have entered into the Exit Facility, conditioned on the entry of the Confirmation Order, which shall provide Cash sufficient to make the Effective Date Payment;

(b) All terms, conditions and provisions of the Plan are approved in the proposed Confirmation Order;

(c) The proposed Confirmation Order shall be in form and substance acceptable to counsel to the Debtors, counsel to DIP Lender, counsel to the Exit Facility lender, and the U.S. Trustee;

(d) The Debtors shall have sufficient Cash to pay in full all Allowed Administrative Expenses, including Fee Claims; and

(e) The terms of the Confirmation Order authorize the Reorganized Debtors to issue the new common stock and new preferred stock pursuant to the exemption from registration under the Securities Act provided by either section 1145 of the Bankruptcy Code or Section 4(a)(2) of the Securities Act, as amended.

The conditions precedent set forth in subparagraphs (a), (b), (c) (d) and (e) above, may be waived by the Debtors, only upon reasonable notice to counsel to DIP Lender, counsel to the Committee, and the U.S. Trustee.

9.02 Conditions Precedent to the Effective Date. The following are the conditions precedent to the Effective Date of the Plan:

(a) The Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall have become a Final Order; and

(b) The Debtors shall have made the Effective Date Payment.

ARTICLE X

DISCHARGE OF CLAIMS, RELEASES AND EXCULPATION

10.01 Interest Holders of the Debtors shall be treated as provided in section 3.08 of this plan.

10.02 Injunction. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, FROM AND AFTER THE CONFIRMATION DATE, ALL PERSONS ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR PROCEEDING (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE DEBTORS' PROPERTY, OR THE ESTATES BASED ON ANY ACT, OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED ON OR BEFORE THE CONFIRMATION DATE, INCLUDING ANY CLAIMS THAT ARE PROPERTY OF THE DEBTORS' BANKRUPTCY ESTATES (COLLECTIVELY, THE "RELEASED CLAIMS"); PROVIDED THAT NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL ENJOIN THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE OR LOCAL AUTHORITY, FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER PROCEEDINGS (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTORS, OR ANY OF THE DEBTORS' OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS, OR THE DEBTORS' PROPERTY, FOR ANY LIABILITY, INCLUDING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES, OR ANY STATE OR LOCAL AUTHORITY. IN ADDITION, THE INJUNCTION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

10.03 Release by the Debtors. PURSUANT TO BANKRUPTCY CODE §1123(b), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, UPON THE EFFECTIVE DATE, THE DEBTORS AND REORGANIZED DEBTORS SHALL RELEASE UNCONDITIONALLY, AND HEREBY ARE DEEMED TO FOREVER RELEASE UNCONDITIONALLY THE FOLLOWING PERSONS (COLLECTIVELY, THE "RELEASED PARTIES"): (A) THE DIP LENDER AND PREPETITION LENDER AND THEIR DIRECTORS, OFFICERS, ADVISORS, ACCOUNTANTS, CONSULTANTS, AND ATTORNEYS; AND (B) THE DEBTORS' ADVISORS, INCLUDING ATTORNEYS AND ACCOUNTANTS, FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, INCLUDING THE RELEASED CLAIMS (EXCEPT FOR THE RIGHT TO ENFORCE THE PERFORMANCE OF THEIR RESPECTIVE OBLIGATIONS, IF ANY, UNDER THE PLAN AND THE RIGHT TO FILE AN OBJECTION WITH THE BANKRUPTCY COURT WITH RESPECT TO ANY FEE CLAIMS), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE, EXCEPT FOR THOSE CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL

CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES. IN ADDITION, THE RELEASE PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

10.04 **Exculpation.** TO THE EXTENT PERMISSIBLE UNDER BANKRUPTCY CODE §1125(e), NEITHER THE RELEASED PARTIES NOR THEIR ADVISORS, ACCOUNTANTS, AND ATTORNEYS, SHALL HAVE OR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION DURING THE PENDENCY OF THE CHAPTER 11 CASES IN CONNECTION WITH, OR ARISING OUT OF, THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, OR THE PROPERTY OR CASH TO BE DISTRIBUTED UNDER THE PLAN; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION SHALL HAVE NO EFFECT ON THE LIABILITY OF AN ENTITY WHICH RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE RESULTED FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES, AND, IN ALL RESPECTS, THE RELEASED PARTIES SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. IN ADDITION, THE EXCULPATION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

NOTHING CONTAINED HEREIN SHALL CONSTITUTE A RELEASE OF AN INDEPENDENT CLAIM HELD BY A CREDITOR OR INTEREST HOLDER AGAINST A NON-DEBTOR ENTITY OR PERSON BASED ON ACTS OR OMISSIONS UNRELATED TO THE DEBTORS OR THE CHAPTER 11 CASES. IN ADDITION, NOTHING CONTAINED HEREIN OR IN THE PLAN SHALL RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES AND SETTLEMENTS CONTAINED IN THE PLAN.

NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, ANY CLAIM ARISING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST: (I) THE DEBTORS; (II) ANY OF THE DEBTORS' SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS; AND (III) THE RELEASED PARTIES. IN ADDITION, SUBJECT TO BANKRUPTCY CODE §§ 524 AND 1141, THE RELEASES DESCRIBED HEREIN SHALL NOT PRECLUDE POLICE, FEDERAL TAX, OR REGULATORY AGENCIES FROM FULFILLING THEIR STATUTORY DUTIES.

THE RELEASES DESCRIBED IN THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER RELEASE SEPARATELY GIVEN, CONDITIONALLY OR UNCONDITIONALLY, BY THE DEBTORS TO ANY OTHER PERSON. ANY RELEASE GIVEN BY THE DEBTORS OR A PERSON WHICH IS PART OF OR SUBJECT TO A FINAL

ORDER OF THE BANKRUPTCY COURT REMAINS IN FULL FORCE AND EFFECT AND ARE RATIFIED BY THE PLAN.

10.05 Persons or Entities Not Released by the Debtors. Except for the releases contained in the Plan, the Confirmation Order and the DIP Financing Order, the Debtors and the Estates are not releasing any claims or actions against any Person, or their respective affiliates, assigns, agents, directors, officers, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing.

10.06 Good Faith. The entry of the Confirmation Order shall constitute the determination by the Bankruptcy Court that the Released Parties have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code, pursuant to, among others, Bankruptcy Code §§1125(e) and 1129(a)(3), with respect to the foregoing.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.01 Headings. The headings used in the Plan are inserted for convenience or reference only and are not part of the Plan.

11.02 Notices. Notices shall be deemed given when received. All notices, requests or demands described in or required to be made in accordance with the Plan shall be in writing and shall be delivered by overnight mail and email transmission as follows:

(a) If to the Debtors or Reorganized Debtors:
SilvermanAcampora LLP
100 Jericho Quadrangle - Suite 300
Jericho, New York 11753
Attn: Gerard R. Luckman
(516) 479-6300
GLuckman@SilvermanAcampora.com

(b) If to the DIP Lender:
McDonald Hopkins LLC
600 Superior Avenue East
Suite 2100
Cleveland, OH 44114
Attn: Scott N. Opincar
(216) 348-5753
sopincar@mcdonaldhopkins.com

(c) If to the Prepetition Lender:
McDonald Hopkins LLC
600 Superior Avenue East
Suite 2100
Cleveland, OH 44114
Attn: Scott N. Opincar
(216) 348-5753
sopincar@mcdonaldhopkins.com

(d) If to the U.S. Trustee:
Office of the U.S. Trustee
201 Varick Street, Suite 1006
New York, New York 10014
Attn: Andrea B. Schwartz
(212) 510-0500
Andrea.B.Schwartz@USDOJ.gov

If to a holder of a Claim or Interest, at the address set forth in its proof of Claim or proof of Interest filed with and allowed by the Court, or, if none, at its address set forth in the Schedules prepared and filed by the Debtors with the Bankruptcy Court pursuant to Bankruptcy Rule 1007(b).

11.03 Change of Address. Any of the parties identified in section 11.02 of the Plan may change the address at which it is to receive notices under the Plan by sending written notice pursuant to the provisions of this Article to counsel to the Debtors.

11.04 Modification of the Plan. The Debtors reserve the right, in accordance with the Bankruptcy Code, upon reasonable notice to and written consent of counsel to DIP Lender and, upon reasonable notice to the Prepetition Lender, to amend or modify the Plan prior to the Confirmation Date or as soon as practicable thereafter. After the Confirmation Date, the Debtors or the Reorganized Debtors may, upon appropriate motion, notice, and order of the Court, remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

11.05 Reservation of Rights. Nothing contained herein shall prohibit the Debtors or the Reorganized Debtors from prosecuting or defending any of the rights of the Debtors' Estates, including without limitation, the Avoidance Actions.

11.06 Severability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.

11.07 Successors and Assigns. The rights and obligations of any entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such entity.

11.08 Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

11.09 The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the bankruptcy Court to close the Chapter 11 Cases.

11.10 Section and Article References. Unless otherwise specified, all references in the Plan to Sections and Articles are to Sections and Articles of the Plan.

[ONE SIGNATURE PAGE TO FOLLOW]

Dated: New York, New York April 12, 2016	**SG BLOCKS, INC.** By: *s/ Paul Galvin* Name: Paul Galvin Title: Chief Executive Officer
Dated: New York, New York April 12, 2016	**SG BUILDING BLOCKS, INC.** By: *s/ Paul Galvin* Name: Paul Galvin Title: Chief Executive Officer
Dated: New York, New York April 12, 2016	**ENDAXI INFRASTRUCTURE GROUP, INC.** By: *s/ Paul Galvin* Name: Paul Galvin Title: Chief Executive Officer

Exhibit 2.2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
-------------------------------------X

In re:	Chapter 11
SG BLOCKS, INC., *et al.,*	Case No.: 15-12790 (JLG)
Debtors.	(Jointly Administered)

-------------------------------------X

DISCLOSURE STATEMENT FOR AMENDED PLAN OF REORGANIZATION FOR SG BLOCKS, INC., *ET AL.* UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

SilvermanAcampora LLP
Attorneys for the Debtors
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Gerard R. Luckman
Brian Powers

Dated April 12, 2016

BANKRUPTCY COURT APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE BANKRUPTCY COURT APPROVAL, OR ITS RECOMMENDATION ON THE MERITS, OF DEBTORS' PLAN OF REORGANIZATION

I. INTRODUCTION

SG Blocks, Inc., SG Building Blocks, Inc. and Endaxi Infrastructure Group, Inc., the above-captioned debtors and debtors-in-possession (the **"Debtors"**) submit this Disclosure Statement (the **"Statement"**) pursuant to section 1125 of title 11, United States Code (the **"Bankruptcy Code"**). The Statement is provided to all of the Debtors' known creditors in order to disclose the information deemed to be material, important, and necessary for the Debtors' creditors to arrive at a reasonably informed decision in exercising their rights to vote on the Plan of Reorganization proposed by the Debtors (the **"Plan"**).[1] A copy of the Plan is annexed hereto as **Exhibit A.** Also accompanying the Plan and Statement is a creditor's voting ballot (the **"Ballot"**) for the acceptance or rejection of the Plan, together with a copy of the Order approving the Statement and Scheduling a Hearing on Confirmation of the Plan.

Definitions and Exhibits

Definitions. The definitions and designations of terms and names in the Plan apply to the Statement and you should refer to the Plan for such definitions and designations.

Exhibits. All Exhibits to the Statement are incorporated as if fully set forth and are a part of the Statement.

Notice to Creditors

The Debtors believe that confirmation and implementation of the Plan is in the best interest of the Debtors' estates, their creditors and Interest holders. Based on the liquidation analysis annexed hereto as **Exhibit B** (the **"Liquidation Analysis"**), the Debtors believe that the distributions provided for in this Plan exceed the distributions that unsecured creditors would receive if the Debtors' assets were liquidated. For this reason, the Debtors believe that approval of the Plan is the best opportunity for Creditors to receive payments with respect to Allowed Claims.

Pursuant to Bankruptcy Code § 1125, on April __, 2016, the Bankruptcy Court approved this Statement for submission to the holders of Claims against, or Interests in, the Debtors. On _________, **2016** at **__:00 __.m.** (the **"Confirmation Hearing"**) a hearing will be held to consider confirmation of the Plan before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, United States Bankruptcy Court, One Bowling Green, New York, New York.

The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and filed on or before **4:00 p.m.** on _________, **2016.** The Confirmation Hearing may be adjourned by the Bankruptcy Court without further notice except for the filing of a notice of the adjourned date on the Bankruptcy Court's docket, or the announcement of the adjourned date at the Confirmation Hearing (or at any subsequent adjourned date for the Confirmation Hearing). Creditors entitled to vote may vote on the Plan by filling out and mailing the accompanying Ballot to SilvermanAcampora LLP (**"SilvermanAcampora"**), attorneys for the Debtors, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attention: Brian Powers, Esq., so that the Ballot is received on or before _________, **2016** at **4:00 p.m.**

[1] Capitalized terms not otherwise defined in this Statement shall have the meanings set forth in the Plan.

Under the Bankruptcy Code, acceptance of a plan by a class of claims occurs when holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims of that class that cast ballots for acceptance or rejection of the plan, vote to accept the plan. Thus, acceptance of the Plan by a particular class will occur only if at least two-thirds in dollar amount and a majority in number of the holders of the claims in that class, that cast their Ballots, vote to accept the Plan. Under the Bankruptcy Code, acceptance of a plan by a class of Interests occurs when holders of at least two-thirds (2/3) in amount of such Interests that cast ballots for acceptance or rejection of the Plan, vote to accept the Plan. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or produced in good faith or in accordance with the provisions of the Bankruptcy Code.

Bankruptcy Code § 1129(b) permits confirmation of the Plan, notwithstanding rejection by one or more Classes of Claims, if: (i) at least one impaired Class has accepted the Plan; and (ii) the Bankruptcy Court finds that the Plan does not "discriminate unfairly," and is "fair and equitable" with respect to the rejecting Class. This procedure is generally referred to as "cram-down."

The purpose of this Statement is to inform all Claim holders of the information deemed to be material, important and necessary in order to make an informed judgment about the Plan, and to vote for the acceptance or rejection of the Plan, where voting is necessary.

The approval by the Bankruptcy Court of this Statement does not constitute a recommendation by the Bankruptcy Court as to the merits of the Plan, only that the Statement contains "adequate information" from which creditors may form an opinion as to the merits of the Plan.

The financial information contained in this Statement has not been subject to a certified audit. Accordingly, the Debtors are unable to warrant or represent that the information is accurate and complete in all respects, although the Debtors have used their best efforts to set forth information and disclosures which are complete and accurate. This Statement has been prepared on the basis of assumptions which the Debtors believe to be reasonable, however, there can be no assurance that these assumptions will prove to have been accurate.

II. EXPLANATION OF CHAPTER 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor may reorganize or liquidate its business and assets.

Since the Petition Date, the Debtors have managed their affairs as debtors and debtors in possession under Bankruptcy Code §§ 1107 and 1108.

The formulation and confirmation of a plan of reorganization or liquidation is the principal purpose of a chapter 11 case. A chapter 11 plan sets forth the means of satisfying or discharging the claims against or interests in a chapter 11 debtor. Chapter 11 does not require that each holder of a claim against a debtor vote in favor of a plan in order for the Bankruptcy Court to approve a plan. If any class of claimants is impaired by a plan, the plan must be accepted by at least one "impaired" class of claims or interests. A claim or interest is deemed impaired if the plan provides that the claimant: (i) will not be repaid in full; (ii) will have any of its legal rights altered; or (iii) has an interest that is adversely affected. The holder of an impaired claim or interest is entitled to vote to accept or reject the plan if the claim or interest is an allowed claim or interest under Bankruptcy Code § 502, or temporarily allowed for voting purposes under Bankruptcy Rule 3018.

III. THE DEBTORS PRIOR TO THE CHAPTER 11 CASES

Description of the Debtors' Business

The Debtors' primary business is to work with architects, developers, builders, and commercial clients to design and build code-engineered, modified cargo shipping containers to meet the growing demand for safe and green construction. Rather than consuming new steel and lumber, the Debtors capitalize on the structural engineering and design parameters a shipping container must meet and repurposes them for use in construction of new structures. The Debtors' containers are used in residential, commercial, and military structures, including major fast food and retail chain locations. The Debtors work closely with third party partner companies to source materials for each project need, and the Debtors provide their technical experience and expertise to assist their partners to meet the client's exact specifications. The Debtors do not perform the modifications or deliveries themselves, but rather all manufacturing and logistics are handled by third party partners. On July 23, 2007, the Debtors entered into an exclusive, 10-year Collaboration and Supply Agreement with ConGlobal Industries, Inc. (**"ConGlobal"**) to provide the Debtors with materials, supplies, and labor for all of their domestic orders. ConGlobal is also a minority shareholder of SG Blocks, owning less than five (5%) percent of SG Blocks' outstanding common stock.

The Debtors' Current Ownership and Structure

SG Blocks is a publicly traded company, which has approximately 107 shareholders. SG Blocks owns 100% of the stock of Building Blocks and Endaxi, as well as 99.99% of the stock of SG Blocks Sistema De Constucao Brasileiro LTDA (**"SG Brazil"**). Building Blocks and Endaxi are not operating entities, and the Debtors do not believe that either Building Blocks or Endaxi have any assets or liabilities, except as guarantors on the pre-petition secured debt of SG Blocks (described below). Endaxi will be closed shortly after the Effective Date and will cease to exist. SB Brazil was formed in 2011 to explore potential business opportunities in Brazil, and is currently inactive.

Prepetition Secured Debt

Due to the nature of the Debtors' business, and the fact that the Debtors' products were relatively new to the industry, the Debtors were unable to obtain conventional financing from a traditional lender. Accordingly, between April 2014 and the Petition Date, through a series of Securities Purchase Agreements, Securities Exchange Agreements, and the issuance of Senior Convertible Debentures, SG Blocks obtained secured financing from Hillair Capital Investments L.P. (**"Hillair"**), Dillon Hill Capital, LLC (**"Dillon"**), Dillon Hill Investment Company, LLC (**"DHIC"**), Frank Casano (**"Casano"),** Scott Masterson (**"Masterson"**) and Marc Nuccitelli (**"Nuccitelli",** and with Hillair, Dillon, DHIC, Casano, and Masterson, collectively, the (**"Prepetition Lender"**) in the aggregate amount of $5,405,010.00. Both Building Blocks and Endaxi are guarantors on all debts owed by SG Blocks to the Prepetition Lender. As of the Petition Date, the entire aggregate amount of the secured debt owed to the Prepetition Lender remains outstanding.

Pursuant to the terms of the foregoing agreements, all of the secured debt owing to the Prepetition Lender is convertible, at the Prepetition Lender's discretion, to shares of common stock in SG Blocks. If the Prepetition Lender elected to convert its secured debt to equity in SG Blocks, the newly issued common stock would seriously dilute the respective ownership percentages of SG Blocks' current equity holders.

The Debtors' Liabilities and Assets

As of the Petition Date, the Debtors, on an unaudited basis, had total assets of approximately $332,209.21. Their total liabilities, including the $5,405,010.00 in secured debt owed to the Prepetition Lender, are approximately $5,774,929.09. The Debtors' gross revenue in 2013 was approximately $5,732,776, and increased in 2014 to $6,036,953. However, the Debtors sustained net losses in 2013 and 2014 of $2,163,302 and $1,537,315, respectively, largely due to the Debtors' efforts to continue to grow in the industry and change industry perceptions with respect to the Debtors' products. In addition, the Debtors have substantially increased their profit margins from 2013 through the Petition Date.

The Pre-Petition Secured Debt and Proposed Conversion to Equity Under the Plan:

The Debtor's pre-petition secured debt consisted of convertible debentures in the following outstanding amounts:

Hillair Capital Investments LP — $3,352,440.00
Dillon Hill Capital LLC — $741,000.00
Dillon Hill Investment Co. LLC — $370,500.00
Frank Casano — $663,936.00
Marc Nuccitelli — $111,150.00
Scott Masterson — $165,984.00

Total — $5,405,010

On the Effective Date, the $5,405,010 of Pre-Petition Secured Debt will be exchanged and converted into 5,405,010 shares of new Series A Convertible Preferred Stock, par value of $1.00 per share, of SG Blocks, Inc. ("SGB"). Each share of SGB's Series A Convertible Preferred Stock is convertible into one share of common stock of SGB upon: (i) a change of control, or (ii) a majority vote of the Series A Convertible Preferred Stock to convert. In addition, any individual holder of Series A Convertible Preferred Stock may convert its Series A Convertible Preferred Stock into common stock at any time.

The Series A Convertible Preferred Stock shall have a liquidation preference at $1 per share.

For corporate governance purposes, the Series A Convertible Preferred Stock shall be voted on a one vote per share basis. The Series A Convertible Preferred Stock shareholders and the holders of the common stock of SGB shall vote together and not as separate classes, and the Series A Convertible Preferred Stock shall be counted on an "as converted" basis, thereby giving the holders of the Series A Convertible Preferred Stock control of SGB.

The Series A Convertible Preferred Stock shall represent 82.5% of the fully diluted equity of SGB. Hillair will own approximately 51% of the fully diluted equity (prior to any conversion of the Exit Facility). SGB will reserve 10%of its shares for Management under a vesting plan described in Article IV below.

Current Equity of SGB — To Receive 7.5% of the Equity of SGB

Upon the conversion to Equity of the pre-petition secured debt. Current equity holders of SGB shall receive new shares of common stock of SGB totaling in the aggregate 7.5% of the equity of SGB.

The Plan provides that fractional shares shall be rounded up or down, such that no fractional shares will be issued. The shares of new common stock will be issued on a pro-rata basis.

The Debtors' Troubles and Current Forecast

As stated above, since the formation of SG Blocks in 2011, the Debtors have focused on expanding their business and securing contracts with new customers. The Debtors, as relative newcomers to the industry offering a novel product, have been slow to gain traction with some of their larger target customers, such as fast food restaurants, retail locations, and the U.S. military. However, largely due to the Debtors' marketing efforts and dissemination of information with respect to the Debtors' product, refurbished shipping containers have become an accepted and sought after alternative to traditional materials in construction.

The Debtors are optimistic about their business prospects moving forward, as the Debtors currently have numerous outstanding bids on tens of millions of dollars of projects, many of which the Debtors believe they will be able to secure. In addition, because of previous successful projects that the Debtors have completed for major customers, the Debtors have seen a recent increase in repeat orders of significant size. Accordingly, the Debtors believe that, with the ability to restructure their debts and obtain additional financing, the Debtors will emerge from a chapter 11 case as successful and profitable companies.

IV. THE DEBTORS' CHAPTER 11 CASE

Commencement and Conduct of the Chapter 11 Case

After the Petition Date, the Debtors, as debtors in possession, have been authorized to manage their businesses and assets in the ordinary course of business without specific Bankruptcy Court authorization.

In connection with the Chapter 11 Case, the Debtors were provided professional services by SilvermanAcampora, as general bankruptcy counsel. The employment of SilvermanAcampora was approved by the Bankruptcy Court on January 21, 2016, effective as of the Petition Date (ECF Doc. No. 38).

First Day Motions

On the Petition Date, the Debtors filed the following motions seeking relief critical to avoid irreparable harm to the Debtors and their businesses (collectively, the **"First Day Motions"**). On October 21, 2015, the Bankruptcy Court conducted an emergency hearing to consider the First Day Motions designed to facilitate the Debtors' transition into chapter 11 by approving certain regular business practices that may have not been specifically authorized under the Bankruptcy Code and/or required specific Bankruptcy Court approval.

A. Emergency Application for Orders (1) Authorizing the Debtors to Incur Post Petition Financing, on an Interim and Final Basis, with Superpriority over Administrative Expenses and Secured by Superpriority Liens Pursuant to 11 U.S.C. §§105(a), 361, 364(c) and 364(d), (2) Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. §363(c) and Providing Adequate Protection Pursuant to 11 U.S.C. §§361 and 507(b), (3) Scheduling a Final Hearing and Establishing Notice Requirements Pursuant to Bankruptcy Rules 2002 and 4001 and Granting Related Relief (ECF Doc. No. 8) (the **"DIP Financing Motion"**).

The DIP Financing Motion requested authority, on an interim and final basis, for the Debtors to (i) utilize the cash collateral of the Prepetition Lender during its chapter 11 case, (ii) obtain debtor in possession financing of up to $600,000.00. The Bankruptcy Court approved the DIP Financing Motion on an interim basis on October 29, 2015 (ECF Doc. No. 19), and on a final basis on November 13, 2015 (ECF Doc. No. 25).

B. Debtors' Motion for an Order Authorizing Continuation of Certain Customer Practices (ECF Doc. No. 7) (the **"Customer Practices Motion"**).

The Customer Practices Motion sought authority for the Debtors to continue certain of their prepetition customer practices, including the honoring of customer deposits, returns, and related warranty and service requests. The Debtors maintained these practices prior to the Petition Date to ensure customer loyalty, and believe that these practices are vital to maintaining customer loyalty. The Court approved the Customer Practices Motion on October 29, 2015 (ECF Doc. No. 18).

Official Committee of Unsecured Creditors

To date, no Official Committee of Unsecured Creditors has been appointed in the Debtors' chapter 11 cases.

Other Key Orders Granted During the Chapter 11 Case

In addition to the First Day Orders, the Bankruptcy Court has entered the following additional orders:

- By Order dated October 30, 2015 (ECF Doc. No. 20), the Court ordered the procedural and administrative consolidation of the Debtors' chapter 11 cases under Case No. 15-12790 (JLG).

- By Order dated December 18, 2015 (ECF Doc. No. 33), the Court set January 25, 2016 as the last date for creditors to file claims against the Debtors that arose prior to the Petition Date. The last date for governmental entities to file claims is April 12, 2016.

Potential Claims of the Debtor

The Debtors and/or Reorganized Debtors will have the opportunity to pursue Avoidance Actions under the Bankruptcy Code if they choose to do so, other than those potential Avoidance Actions against Released Parties released in section 10.03 of the Plan. The Debtors and/or Reorganized Debtors may be entitled to recover certain transfers of property made prior to the Petition Date for the benefit of the Estates. Lawsuits to recover these transfers are defined in this Plan as the "Avoidance Actions." Presently, the Debtors do not intend to pursue recovery of Avoidance Actions because the Debtors believe that (a) the aggregate amount of the recoverable transfers is relatively small, (b) the Debtors do not want to take positions which would be adverse to their ongoing relationships with its vendors and suppliers, and (c) the legal fees and costs associated with pursuing Avoidance Actions would not justify the possible benefits.

Postpetition Business Operations

Since the Petition Date, the Debtors have been operating their businesses in accordance with the budgets established by the Debtors, and approved by the DIP Lender in connection with the DIP Financing Order. Through the post-petition restructuring process, the Debtors have maintained their talent and reputation in the market place. Since the Petition Date, the Debtors have continued to secure additional business and collect receivables. The Debtors project that their business will continue to improve and that the Debtors will operate profitably in 2016 and beyond.

The Exit Financing

On the Effective Date of the Plan, the Debtor in Possession credit facility will be converted into a new 12% Original Issue Discount Senior Secured Convertible Debenture (the **"Exit Facility"**) due two years from the Effective Date of the Plan. The amount of the Exit Facility shall be calculated as follows:

The total principal amount of the DIP credit facility of $600,000 plus interest and unpaid fees and costs under the DIP credit facility on the Effective Date of the plan, plus $500,000 of new capital.

The sum of the foregoing shall be multiplied by 1.25 to obtain the principal amount of the Exit Facility on the date due.

Hillair will be the sole holder under the Exit Facility.

The Exit Facility shall be secured by a first-priority lien and security interest on all of the Debtors' assets, other than the lien granted to IPFS Corporation in connection with its super-priority security interest in certain insurance policies.

All of the Reorganized Debtors shall unconditionally guaranty the obligations and indebtedness owed to Hillair under the Exit Facility, and such guaranty agreements shall be secured by a first-priority lien and security interest on all of the guarantor's assets, including, without limitation, a pledge of the guarantor's stock/membership interests to Hillair.

The Form of the Exit Facility will be based on the Debtors' prior convertible debentures that constituted the pre-petition secured debt.

The Exit Facility is due two years from the Effective Date. At any time after the original issue date until the Exit Facility is no longer outstanding, it shall be convertible, in whole or in part, into shares of the Debtors' common stock at Hillair's option, at any time and from time to time, upon delivery of a notice to the Debtors.

The Debtors' shall reserve sufficient common stock to permit the conversion.

The conversion of the Exit Facility into common stock will dilute the Debtors' other shareholders.

Management Stock Option Plan and Management of the Reorganized Debtors

The proposed management of the Reorganized Debtor, their names, titles and compensation is set forth as follows:

Paul Galvin, CEO
Annual base compensation of $180,000, plus health care
Annual bonus — target is 100% of base salary, based on calculation below
Stock Option grant of 4.5% of outstanding equity at emergence, of which two (2%) percent will vest at emergence from bankruptcy, remaining over 3 year vesting schedule. The Option strike price will be at price per common share at emergence.

Steve Armstrong, President
Base compensation of $106,000
Annual bonus — Target is 100% of base salary, based on calculation below
Stock Option grant of 2.0% of outstanding equity at emergence, of which one-half (0.5%) percent will vest at emergence from bankruptcy, remaining over 2 year vesting schedule. Option strike price will be at price per common share at emergence

David Cross, VP Business Development
Base compensation of $106,000
Annual bonus — Target is 100% of base salary, based on calculation below
Stock Option grant of 2.0% of outstanding equity at emergence, of which one-half (0.5%) percent will vest at emergence from bankruptcy, remaining over 3 year vesting schedule Option strike price will be at price per common share at emergence

Mahesh Shetty, CFO
Base compensation of $10,000 per month, paid as a consultant (no bonus)
Stock Option grant of 1.0% of outstanding equity at emergence of which 0.5% will vest at emergence from bankruptcy, 0.5% at time of filing of 2016 10-K
Option strike price will be at price per common share at emergence

Kevin Kinq, Controller
Base compensation of $60,000
Annual bonus — Target is 50% of base salary, based on calculation below
Stock Option grant of 0.5% of outstanding equity at emergence which will vest at emergence from bankruptcy
Option strike price will be at price per common share at emergence

Conditions to calculate bonus pool for 2016:
Reorganized Debtors must achieve revenue of at least $12 million for fiscal year 2016 (ending December 31, 2016), as expressed in the applicable 10-K filing. Revenue must be recognized in fiscal year 2016, and must be paid by March 31, 2017
20% of EBITDA from Q2-Q4 2016 (after base salaries and all other expenses) will be allocated to a bonus pool to be distributed as follows:
CEO — 42%
President — 25%
VP Business Development — 25%
Controller — 8%

V. SUMMARY OF PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND INTERESTS

Below is a summary of the Plan. Parties in interest are urged to review the Plan in its entirety to determine how the Plan affects their rights as Creditors or Interest holders.

The Plan provides for the reorganization of the Debtors by the use of the Exit Facility, which shall provide the necessary Cash to fund the Effective Date Payment. From the Effective Date, Payment, the Debtors will pay the DIP obligations, Administrative Expenses, Priority Claims and the Initial Distribution to unsecured creditors.

The Debtors project that they will have funds that will be sufficient to make the Effective Date Payments required under the Plan. The projections annexed hereto as **Exhibit C** demonstrate that the Debtors' business operations will support the payments required by the Plan.

The Debtors currently anticipate that the Effective Date will occur no later than thirty days after the confirmation of the Plan.

The Debtors believe that the treatment of Creditors under the Plan provides creditors with substantially greater value compared to what they would receive in liquidation under chapter 7 of the Bankruptcy Code. *See Exhibit B,* Liquidation Analysis.

Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy Code. They are not considered impaired, and holders of such claims do not vote on the Plan. Holders of these claims may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Bankruptcy Code. As such, the Debtors have *not* placed the following claims in any class:

Statutory Fees

Statutory fees, and any applicable interest thereon, are all fees payable pursuant to Chapter 123 of Title 28, United States Code, including, but not limited to, all fees required to be paid by 28 U.S.C. §1930(a)(6) plus any interest due and payable under 31 U.S.C. §3717 (**"U.S. Trustee Fees"**). U.S. Trustee Fees will accrue and be timely paid until the Case is closed, dismissed, or converted to another chapter under the Bankruptcy Code. Any U.S. Trustee Fees owed on or before the Effective Date of this Plan will be paid in full on the Effective Date of the Plan.

The following chart lists the Debtors' estimated U.S. Trustee Fees and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
U.S. Trustee Fees	$ 5,525	Paid in full in Cash on the Effective Date of the Plan.

Administrative Expenses

Administrative Expenses are costs or expenses of administering the Debtors' Chapter 11 Case which are allowed under Bankruptcy Code § 503. Administrative Expenses also include the value of any goods sold to the Debtors in the ordinary course of business and received within twenty (20) days prior to the Petition Date. The Bankruptcy Code requires that all Administrative Expenses be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtors' estimated administrative expenses and their proposed treatment under the Plan:

Type	Estimated Amount Owed		Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the Petition Date	$	490,000	To the extent not paid in the ordinary course pursuant to the budget attached to the Cash Collateral Order, they will be paid in full on the Effective Date, in Cash, or upon such other terms as may be agreed upon by the holder of the Claim and the Debtors.
Professional Fees, as approved or to be approved by the Bankruptcy Court. SilvermanAcampora LLP Counsel to the Debtor	$	100,000.00 (estimated)	Paid in full on the Effective Date, in Cash or according to Bankruptcy Court order if such fees have not been approved by the Bankruptcy Court on the Effective Date of the Plan.
Clerk's Office Fees	$	0.00	Paid in full on the Effective Date.
Other administrative expenses	$	0.00	Paid in full on the Effective Date, in Cash, or upon such other terms as may be agreed upon by the holder of the Claim and the Debtors.
TOTAL	$	567,839.83	

Priority Tax Claims

Priority Tax Claims are not impaired. All Allowed Priority Tax Claims shall be paid on the Effective Date unless such claims are Allowed in an amount significantly greater than estimated or in an amount that would jeopardize a recovery to unsecured creditors, then in that case Priority Tax Claims will be paid over a five (5) year period in accordance with Bankruptcy Code §1129(a), at the prime rate of interest per annum as set forth in the Wall Street Journal, or other comparable publication. Holders of Priority Tax Claims shall not be entitled to vote on the Plan.

The following chart lists the Debtors' estimated section 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	Estimated Amount Owed		Date of Assessment	Treatment
Tax Claims (estimated)	$	5,724.25		All Allowed Priority Tax Claims shall be paid on the Effective Date unless such claims are Allowed in an amount significantly greater than estimated or in an amount that would jeopardize a recovery to unsecured creditors, then in that case Priority Tax Claims will be paid over a five (5) year period in accordance with Bankruptcy Code §1129(a), at the prime rate of interest per annum as set forth in the Wall Street Journal, or other comparable publication.

Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

Classes of Priority Unsecured Claims

Certain priority claims that are referred to in Bankruptcy Code § 507(a) are required to be placed in classes. The Bankruptcy Code requires that each holder of a priority claim receive Cash on the Effective Date of the Plan equal to the allowed amount of such claim; however, a class of holders of such claims may vote to accept different treatment.

The Debtors propose to pay priority unsecured claims on the Effective Date.

Class #	Description	Impairment	Treatment
1	Priority Non-Tax Claims $0.00	Unimpaired	Paid in full on the Effective Date.

Classes of Secured Claims

Allowed Secured Claims are claims secured by property of the Debtors' bankruptcy estates (or that are subject to setoff) to the extent allowed as secured claims under Bankruptcy Code § 506. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be treated as a General Unsecured Claim.

Class #	Description	Impairment	Treatment
2	DIP Lender Secured Claim in the amount of approximately $600,000	Unimpaired	Paid in full on the Effective Date.
3	Prepetition Lender Secured Claim ($5,405,010.00)	Impaired	Shall receive one hundred (100%) percent of a newly issued convertible preferred stock on the basis of one share of preferred stock per dollar of Allowed Petition Lender Secured Claim. The preferred stock shall vote with the common stock of the Reorganized Debtor on an as converted basis, shall receive dividends with the common stock, and shall have a $1.00 per share liquidation preference.

Classes of General Unsecured Claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under Bankruptcy Codes § 507(a).

The following chart identifies the Plan's proposed treatment of Class 4 Claims, which consist of General Unsecured Claims against the Debtors:

Class #	Description	Impairment	Treatment
4	General Unsecured Claims $399,218.66 (approx.) — combined scheduled and proof of claim amount.	Impaired	Shall receive a Distribution of one hundred (100%) percent of its Allowed Claim, plus post-petition interest calculated at the Federal judgment rate, payable as follows: fifty (50%) percent of its Allowed Claim on the Effective Date as part of the Effective Date Payment, twenty five (25%) percent at the conclusion of the next full fiscal quarter of the Reorganized Debtor after the Effective Date, and the remaining twenty five (25%) percent of its Allowed Claim, plus any post-petition interest owed, at the conclusion of the second full fiscal quarter of the Reorganized Debtor after the Effective Date.

Class 5 Interest Holders

Shares of stock held by each holder of Interests in the Debtors shall be cancelled and replaced by such holder's pro rata share of 100% of the new common stock in the Reorganized Debtors that is outstanding at the Effective Date. Such common stock ownership in the Reorganized Debtors is subject to dilution by conversion of the preferred stock as described in Section 3.06 of the Plan. Assuming 100% of such preferred stock is converted and taking into account the Management Options (defined in section 3.06 of the Plan) as if fully exercised, the holders of the Class 5 Interests would hold 7.5% of the common stock of the Reorganized Debtor. The ownership interest of the holders of the Class 5 Interests is subject to further dilution upon the conversion of the Exit Facility into new common stock. Class 5 Interests are impaired.

Claims and Interests Not Impaired Under the Plan

The term "impaired" as used below shall have the same meaning as it has pursuant to Bankruptcy Code § 1124. Holders of Administrative Expenses, Priority Tax Claims, Class 1 (Non-Tax Priority Claims), and Class 2 (DIP Lender Secured Claim) are not impaired and shall be paid in full, on the Effective Date.

Classes 1 and 2 are not impaired under the Plan and, therefore, holders of Claims in Classes 1 and 2 are deemed to accept the Plan.

Claims and Interests Impaired Under the Plan

Claims in Classes 3 and 4 and Interests in Class 5 are impaired under the Plan. The holders of Claims in Classes 3 and 4 and Interests in Class 5 are entitled to vote on the Plan.

VI. MEANS FOR IMPLEMENTATION OF THE PLAN

No later than two (2) Business Days before the Confirmation Hearing, the Debtors shall provide proof that they will have sufficient funds to make the Effective Date Payment required under the Plan. The payments under the Plan will be made from (a) Effective Date Payment, and (b) the Cash derived from the Debtors' operations and/or the Reorganized Debtors' operations.

On the Effective Date, the Debtors will have sufficient Cash to pay in full the following amounts required to be paid under the Plan:

- U.S. Trustee's fees and any applicable interest;

- Allowed Priority Tax Claims and Priority (Non-Tax) Claims;

- The initial payment (or reserve in the event of Disputed Claims) to Holders of Class 4 Claims which shall be fifty (50%) of the amount owed to Holders of Allowed Class 4 Claims;

- Allowed Administrative Expenses, including Allowed Fee Claims (except to the extent that the holders of Administrative Expenses agree to different treatment, and except for Allowed Administrative Expenses held pursuant to Bankruptcy Code 503(b)(9) which shall be paid as soon as reasonably practicable after the Effective Date or upon such other terms as may be agreed to by the holder thereof and the Debtor).

On the later to occur of (a) the Effective Date, and (b) the date such Claim becomes Allowed by a Final Order of the Bankruptcy Court, or as soon thereafter is reasonably practicable, the Debtors shall use available Cash to pay in full, or establish appropriate reserves for Allowed Administrative Expenses, including Allowed Fee Claims, except as otherwise agreed to by the holder thereof and the Debtors. The Debtors shall pay all Priority Tax Claims, and Priority (Non-Tax) Claims, in accordance with Article III of the Plan.

To the extent necessary to pay Allowed Claims under the Plan, the Reorganized Debtor will pay the remaining fifty (50%) percent of the Allowed Class 4 Claims from their cash flow in accordance with the Plan.

Quarterly Reports. Until the Chapter 11 Cases are closed, the Reorganized Debtors shall file quarterly reports setting forth (a) the status of Distributions to holders of Allowed Class 4 Claims, and (b) the status of any Avoidance Actions. The quarterly reports shall be filed on or before the 15th day of July, October, January and April. In addition, the Reorganized Debtors shall maintain an accurate register of the General Unsecured Claims.

Vesting of Assets. As of the Effective Date, pursuant to provisions of Bankruptcy Code §§ 1141(b) and (c), all property and assets of the Debtors shall be transferred to and shall vest in the Reorganized Debtors free and clear of all Liens, Claims and Interests, except as otherwise expressly provided in this Plan, and the Confirmation Order.

Continuing Existence. From and after the Effective Date, the Reorganized Debtors, other than Endaxi, will continue in existence and shall continue normal operations of their business as corporations under applicable law.

Post-Consummation Implementation. On the Effective Date, all relevant parties (including the Debtors, the Reorganized Debtors, the DIP Lender, and the Prepetition Lender) will take all actions necessary to cause title to the Debtors' assets to be transferred to the Reorganized Debtors, and for the termination of any security interests, or Uniform Commercial Code filings, after the conversion of secured claims to equity. Promptly after full administration of the Debtors' estates, the Debtors shall file the Closing Report in accordance with Local Bankruptcy Rule 3022-1, within the deadlines set forth therein, and an application for a Final Decree.

Professionals. The Reorganized Debtors may retain and compensate professionals, including professionals who have been or are currently retained as the Debtors' professionals, without approval from the Bankruptcy Court.

Release of Avoidance Actions. On the Effective Date, the Debtors, on behalf of themselves and their Estates shall release any and all Avoidance Actions and the Debtors and the Reorganized Debtors, and any of their successors and assigns and any entity acting on behalf of the Debtors or the Reorganized Debtors shall be deemed to have waived the right to pursue any and all Avoidance Actions.

VII. EXECUTORY CONTRACTS AND LEASES

Any executory contract or unexpired lease of the Debtors which has not been assumed or rejected by Final Order of the Bankruptcy Court, or which is not the subject of a pending motion to assume or reject on the Confirmation Date, shall be deemed assumed by the Debtors on the Effective Date. Simultaneously with service of the Plan and Disclosure Statement, the Debtors shall provide a notice to all counter-parties to executory contracts proposed to be assumed, substantially in the former annexed to the Plan as **Exhibit 1.** Such counter-parties shall have until seven (7) days prior to the Confirmation Hearing to file an objection to the proposed cure amount provided in such notice. All objections to cure amounts shall be heard at the Confirmation Hearing. To the extent that the D&O Liability Insurance Policies are considered to be Executory Contracts, notwithstanding anything in the Plan to the contrary, effective as of the Effective Date, the Reorganized Debtors shall be deemed to have assumed all unexpired D&O Liability Insurance Policies with respect to the Debtors' directors, managers, officers, and employees serving on or prior to the Petition Date pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtors' assumption of each of the unexpired D&O Liability Insurance Policies. On the Effective Date, the Debtors shall be deemed to have assumed all of the Debtors insurance policies.

Any entity with a Claim that arises from the rejection of an executory contract or unexpired lease must file its Claim within thirty (30) days after the later of the date of the order rejecting the executory contract or unexpired lease and the Confirmation Date, and shall have the same rights as a Class **4** Claimant to the extent such Claim becomes an Allowed General Unsecured Claim. **Any Claims arising from the rejection of an executory contract or unexpired lease not filed with the Bankruptcy Court within such time will be automatically treated as a Disallowed Claim, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Reorganized Debtors, the Estates, or property of the foregoing parties, without the need for any objections by the Debtors or the Reorganized Debtors, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other entity, and any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or any proof of Claim to the contrary.**

VIII. PROCEDURE FOR RESOLVING DISPUTED CLAIMS

Article VII of the Plan sets forth the procedures for resolving Disputed Claims under the Plan, including the establishment of Disputed Claims Reserves for certain Disputed Claims.

IX. RETENTION OF JURISDICTION

The Bankruptcy Court shall retain jurisdiction over the Debtors, the Reorganized Debtors, and the Chapter 11 Cases pursuant to chapter 11 of the Bankruptcy Code and for the purposes set forth in Bankruptcy Code §1127(b), including, without limitation, with respect to the following matters:

a. to enable the Debtors or the Reorganized Debtors, as applicable, to prosecute any Avoidance Actions;

b. to hear and determine any claim or cause of action belonging to the Estates, and any disputes concerning the classification, allowance, or estimation of any Claim;

c. to resolve any disputes concerning any funds held in the Disputed Claims Reserve;

d. to hear and determine all disputed issues relating to a security or ownership interest in any property of the Estates, or in any proceeds thereof;

e. to hear and determine all Claims arising out of any agreement entered into by the Debtors after the Petition Date but prior to the entry of the Confirmation Order;

f. to recover all assets and property of the Debtors wherever located;

g. to alter, modify and amend the Plan pursuant to Bankruptcy Code §1127 or to remedy any defect, cure any omissions, or reconcile any inconsistency in the Plan or Confirmation Order as may be necessary to carry out the purpose and intent of the Plan, and to extent authorized by the Bankruptcy Code or Bankruptcy Rules;

h. to hear and determine such other matters as may be provided for in the Confirmation Order and for the purposes set forth in Bankruptcy Code §§1127(b) and 1142, or in Bankruptcy Rules 1019 and 3020(d);

i. to hear and determine all applications for compensation of professionals for services rendered and expenses incurred through the Confirmation Date, and thereafter to hear and determine any objections to compensation of professionals;

j. to hear and determine any and all pending applications, adversary proceedings, contested matters and litigated matters;

k. to hear and determine any disputed issues with respect to the payments to be made under the Plan;

l. to enter orders that are necessary or appropriate to carry out the provisions of the Plan, including orders interpreting the provisions of the Plan;

m. to enter a Final Order or decree concluding the Debtors' Chapter 11 Case; and

n. to determine such other matters as may be provided for in the Confirmation Order, or as may be authorized under the provisions of the Bankruptcy Code.

X. CONFIRMATION AND EFFECTIVE DATE

Conditions Precedent to Confirmation. The following are the conditions precedent to the Confirmation of the Plan:

a. The Debtors shall have entered into the Exit Facility, conditioned on the entry of the Confirmation Order, which shall provide Cash sufficient to make the Effective Date Payment;

b. All terms, conditions and provisions of the Plan are approved in the Confirmation Order;

c. The proposed Confirmation Order shall be in form and substance acceptable to counsel to the Debtors, counsel to DIP Lender, counsel to the Exit Facility lender, and the U.S. Trustee;

d. The Debtors shall have sufficient Cash to pay in full all Allowed Administrative Expenses, including Fee Claims; and

e. The terms of the Confirmation Order authorize the Reorganized Debtors to issue the new common stock and new preferred stock pursuant to the exemption from registration under the Securities Act provided by either section 1145 of the Bankruptcy Code or Section 4(a)(2) of the Securities Act, as amended.

The conditions precedent set forth in subparagraphs (a)—(e) above, may be waived by the Debtors, only upon reasonable notice to counsel to Prepetition Lender, counsel to the Committee, and the U.S. Trustee.

Conditions Precedent to the Effective Date. The following are the conditions precedent to the Effective Date of the Plan:

a. The Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall have become a Final Order; and

b. The Debtors shall have made the Effective Date Payment.

XI. DISCHARGE OF CLAIMS, RELEASES AND EXCULPATION

Interest Holders of the Debtors. UPON THE EFFECTIVE DATE, NOTWITHSTANDING BANKRUPTCY CODE §1141(d)(1), INTERESTS IN THE DEBTORS SHALL REMAIN, AND SUCH HOLDER SHALL MAINTAIN ALL RIGHTS UNDER BANKRUPTCY LAW AND NON-BANKRUPTCY LAW WITH RESPECT TO THOSE INTERESTS, SUBJECT TO THE DILUTION OF SUCH INTERESTS AS SET FORTH IN THE PLAN.

Injunction. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, FROM AND AFTER THE CONFIRMATION DATE, ALL PERSONS ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR PROCEEDING (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE DEBTORS' PROPERTY, OR THE ESTATES BASED ON ANY ACT, OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED ON OR BEFORE THE CONFIRMATION DATE, INCLUDING ANY CLAIMS THAT ARE PROPERTY OF THE DEBTORS' BANKRUPTCY ESTATES (COLLECTIVELY, THE "RELEASED CLAIMS"); PROVIDED THAT NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL ENJOIN THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE OR LOCAL AUTHORITY, FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER PROCEEDINGS (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTORS, OR ANY OF THE DEBTORS' OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS, OR THE DEBTORS' PROPERTY, FOR ANY LIABILITY, INCLUDING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES, OR ANY STATE OR LOCAL AUTHORITY. IN ADDITION, THE INJUNCTION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

Release by the Debtors. PURSUANT TO BANKRUPTCY CODE §1123(b), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, UPON THE EFFECTIVE DATE, THE DEBTORS AND REORGANIZED DEBTORS SHALL RELEASE UNCONDITIONALLY, AND HEREBY ARE DEEMED TO FOREVER RELEASE UNCONDITIONALLY THE FOLLOWING PERSONS (COLLECTIVELY, THE "RELEASED PARTIES"): (A) THE DIP LENDER AND PREPETITION LENDER AND THEIR DIRECTORS, OFFICERS, ADVISORS, ACCOUNTANTS, CONSULTANTS, AND ATTORNEYS; AND (B) THE DEBTORS' ADVISORS, INCLUDING ATTORNEYS AND ACCOUNTANTS, FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, INCLUDING THE RELEASED CLAIMS (EXCEPT FOR THE RIGHT TO ENFORCE THE PERFORMANCE OF THEIR RESPECTIVE OBLIGATIONS, IF ANY, UNDER THE PLAN AND THE RIGHT TO FILE AN OBJECTION WITH THE BANKRUPTCY COURT WITH RESPECT TO ANY FEE CLAIMS), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE, EXCEPT FOR THOSE CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES. IN ADDITION, THE RELEASE PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

A . **Exculpation. TO THE EXTENT PERMISSIBLE UNDER BANKRUPTCY CODE §1125(e), NEITHER THE RELEASED PARTIES NOR THEIR ADVISORS, ACCOUNTANTS, AND ATTORNEYS, SHALL HAVE OR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION DURING THE PENDENCY OF THE CHAPTER 11 CASES IN CONNECTION WITH, OR ARISING OUT OF, THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, OR THE PROPERTY OR CASH TO BE DISTRIBUTED UNDER THE PLAN; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION SHALL HAVE NO EFFECT ON THE LIABILITY OF AN ENTITY WHICH RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE RESULTED FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT,** *ULTRA VIRES* **ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES, AND, IN ALL RESPECTS, THE RELEASED PARTIES SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. IN ADDITION, THE EXCULPATION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.**

EXCEPT FOR THE RELEASED CLAIMS, NOTHING CONTAINED HEREIN SHALL CONSTITUTE A RELEASE OF AN INDEPENDENT CLAIM HELD BY A CREDITOR OR INTEREST HOLDER AGAINST A NON-DEBTOR ENTITY OR PERSON BASED ON ACTS OR OMISSIONS UNRELATED TO THE DEBTORS OR THE CHAPTER 11 CASES. IN ADDITION, NOTHING CONTAINED HEREIN OR IN THE PLAN SHALL RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES AND SETTLEMENTS CONTAINED IN THE PLAN.

NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, ANY CLAIM ARISING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST: (I) THE DEBTORS; (II) ANY OF THE DEBTORS' SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS; AND (III) THE RELEASED PARTIES. IN ADDITION, SUBJECT TO BANKRUPTCY CODE §§ 524 AND 1141, THE RELEASES DESCRIBED HEREIN SHALL NOT PRECLUDE POLICE, FEDERAL TAX, OR REGULATORY AGENCIES FROM FULFILLING THEIR STATUTORY DUTIES.

THE RELEASES DESCRIBED IN THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER RELEASE SEPARATELY GIVEN, CONDITIONALLY OR UNCONDITIONALLY, BY THE DEBTORS TO ANY OTHER PERSON. ANY RELEASE GIVEN BY THE DEBTORS OR A PERSON WHICH IS PART OF OR SUBJECT TO A FINAL ORDER OF THE BANKRUPTCY COURT REMAINS IN FULL FORCE AND EFFECT AND ARE RATIFIED BY THE PLAN.

Persons or Entities Not Released by the Debtors. Except for the releases contained in the Plan, the Confirmation Order and the DIP Financing Order, the Debtors and the Estates are not releasing any claims or actions against any Person, or their respective affiliates, assigns, agents, directors, officers, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing.

Good Faith. The entry of the Confirmation Order shall constitute the determination by the Bankruptcy Court that the Released Parties have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code, pursuant to, among others, Bankruptcy Code §§1125(e) and 1129(a)(3), with respect to the foregoing.

XII. MISCELLANEOUS PROVISIONS

Headings. The headings used in the Plan are inserted for convenience or reference only and are not part of the Plan.

Notices. Notices shall be deemed given when received. All notices, requests or demands described in or required to be made in accordance with the Plan shall be in writing and shall be delivered by overnight mail and email transmission as follows:

(a) If to the Debtors or Reorganized Debtors:
SilvermanAcampora LLP
100 Jericho Quadrangle - Suite 300
Jericho, New York 11753 Attn: Gerard R. Luckman
(516) 479-6300
GLuckman@SilvermanAcampora.com

(b) If to the DIP Lender:
McDonald Hopkins LLC
600 Superior Avenue East
Suite 2100
Cleveland, OH 44114
Attn: Scott N. Opincar
(216) 348-5753
SOpincar@mcdonaldhopkins.com

(c) If to the Prepetition Lender: McDonald Hopkins LLC
600 Superior Avenue East
Suite 2100
Cleveland, OH 44114
Attn: Scott N. Opincar
(216) 348-5753
SOpincar@McDonaldHopkins.com

(d) If to the U.S. Trustee:
Office of the U.S. Trustee
201 Varick Street, Suite 1006
New York, New York 10014
Attn: Andrea B. Schwartz
(212) 510-0500
Andrea.B.Schwartz@USDOJ.gov

If to a holder of a Claim or Interest, at the address set forth in its proof of Claim or proof of Interest filed with and allowed by the Court, or, if none, at its address set forth in the Schedules prepared and filed by the Debtors with the Bankruptcy Court pursuant to Bankruptcy Rule 1007(b).

Change of Address. Any of the parties identified in section 11.02 of the Plan may change the address at which it is to receive notices under the Plan by sending written notice pursuant to the provisions of this Article to counsel to the Debtors.

Modification of the Plan. The Debtors reserve the right, in accordance with the Bankruptcy Code, upon reasonable notice to and written consent of counsel to DIP Lender and upon reasonable notice to the Prepetition Lender, to amend or modify the Plan prior to the Confirmation Date or as soon as practicable thereafter. After the Confirmation Date, the Debtors or the Reorganized Debtors may, upon appropriate motion, notice, and order of the Court, remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

Reservation of Rights. Nothing contained herein shall prohibit the Debtors or the Reorganized Debtors from prosecuting or defending any of the rights of the Debtors' Estates, including without limitation, the guaranty claims against Red Cardinal and the Avoidance Actions.

Severability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.

Successors and Assigns. The rights and obligations of any entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such entity.

Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

Section and Article References. Unless otherwise specified, all references in the Plan to Sections and Articles are to Sections and Articles of the Plan.

XIII. ALTERNATIVES TO THE PLAN

Liquidation Analysis and Valuation

The Debtors and their professionals have carefully considered alternatives to the Plan. The alternatives considered were the sale of the Debtors' assets as a "going concern" and the liquidation of the Debtors' assets. After considering these alternatives, including the Liquidation Analysis, the Debtors determined that the Plan provides creditors and Interest Holders with greater recoveries than they would receive in the event of a sale of the Debtors' business or assets, or a liquidation of the Debtors' assets.

The Debtors believe that the total consideration offered to Creditors under the Plan is more than Creditors would receive in a liquidation under chapter 7 of the Bankruptcy Code. In addition, the Debtors believe that no party would likely offer more for the stock in the Reorganized Debtors.

Liquidation Under Chapter 7 of the Bankruptcy Code

If the Plan is not confirmed under Bankruptcy Code § 1129(a), the Debtors may convert the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, in which case, a trustee would be elected or appointed to liquidate any remaining assets of the Debtors for distribution to creditors pursuant to chapter 7 of the Bankruptcy Code. If a trustee is appointed, the Debtors believe that all Creditors holding Allowed General Unsecured Claims will receive less than they would under the Plan. In the event of liquidation under chapter 7 of the Bankruptcy Code, the Debtors believe that all of the Cash proceeds of such liquidation primarily would be paid to holders of Secured Claims, and only certain of the Administrative Expense Claims that were subject of a carve-out of the DIP Lender's liens.

The Debtors encourage all creditors to carefully review the Liquidation Analysis annexed hereto as Exhibit B to fully understand how General Unsecured Creditors will be treated if the Debtors' assets were liquidated.

Certain Risk Factors

Under the Plan, Class 4 Creditors will be paid fifty (50%) percent of their Allowed Claims on the Effective Date, and twenty five (25%) percent at the end of each of the two fiscal quarters after the Effective Date, from the cash flow generated from the Debtors' operations. Although the Debtors have developed financial projections which indicate that the Debtors will have the ability to make the payments required under the Plan, the Debtors' financial performance may not meet those projections due to many factors, some of which are outside of the Debtors' control. As a part of each Creditor's analysis of the Plan, they should consider the risk that the Debtors may not meet their financial projections. Creditors are encouraged to review the Debtors' projections attached to the Statement as Exhibit C.

In the event that the Plan is not confirmed or the Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code, the Debtors believe that such action or inaction, as these cases may be, will cause General Unsecured Creditors to receive less than they would ultimately receive under the Plan. The Debtors believe that conversion of these cases to chapter 7 will cause the Debtors' Estates to incur substantial expenses which will negatively affect potential recoveries for General Unsecured Creditors.

XIV. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

THE DEBTORS AND THEIR PROFESSIONALS ARE NOT MAKING ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF CONFIRMATION AND CONSUMMATION OF THE PLAN, WITH RESPECT TO THE DEBTORS, HOLDERS OF CLAIMS, OR HOLDERS OF INTERESTS, NOR ARE THEY RENDERING ANY FORM OF LEGAL OPINION OR TAX ADVICE ON SUCH TAX CONSEQUENCES. THE TAX LAWS APPLICABLE TO CORPORATIONS OR LIMITED LIABILITY COMPANIES IN BANKRUPTCY ARE EXTREMELY COMPLEX, AND HOLDERS OF CLAIMS AND HOLDERS OF INTERESTS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING TAX CONSEQUENCES OF THE PLAN, INCLUDING FEDERAL, FOREIGN, STATE AND LOCAL TAX CONSEQUENCES.

XV. VOTING PROCEDURES AND REQUIREMENTS

Ballots and Voting Deadline

IT IS IMPORTANT THAT THE HOLDERS OF CLAIMS AND INTERESTS IN CLASSES 3, 4 AND 5 TIMELY EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN. Holders of Claims and Interests in Classes 3, 4 and 5 have been sent a Ballot together with this Statement. Such holders should read the Ballot carefully and follow the instructions contained therein. Please use only the Ballot that accompanies this Statement.

SilvermanAcampora shall serve as voting agent (the **"Voting Agent"**) to assist in the transmission of voting materials and in the tabulation of votes with respect to the Plan. FOR YOUR VOTE TO BE COUNTED, YOUR VOTE MUST BE RECEIVED BY THE VOTING AGENT AT THE ADDRESS SET FORTH BELOW BEFORE THE VOTING DEADLINE OF **4:00 P.M.** ON ___________, **2016.**

IF A BALLOT IS DAMAGED OR LOST, YOU MAY CONTACT THE VOTING AGENT AT THE ADDRESS SET FORTH BELOW. ANY BALLOT THAT IS EXECUTED AND RETURNED BUT WHICH DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.

IF YOU HAVE ANY QUESTIONS CONCERNING VOTING PROCEDURES, YOU MAY CONTACT THE VOTING AGENT AT:

SilvermanAcampora LLP
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Attn: Brian Powers

Additional copies of this Statement are available upon request made to the Voting Agent. **Holders of Claims Entitled to Vote**

Classes 3, 4 and 5 are the only classes of Claims and Interests under the Plan that are impaired and entitled to vote to accept or reject the Plan. All holders of Classes 3, 4 Claims and Class 5 and Interests should complete the enclosed Ballot and return it to the Voting Agent so that it is received by the Voting Agent before the Voting Deadline.

Withdrawal of Ballots

Any voter that has delivered a valid Ballot may withdraw its vote by delivering a written notice of withdrawal to the Voting Agent before the Voting Deadline. To be valid, the notice of withdrawal must (i) be signed by the party who signed the Ballot to be revoked, and (ii) be received by the Voting Agent before the Voting Deadline. The Debtors may contest the validity of any withdrawals.

Any holder that has delivered a valid Ballot may change its vote by delivering to the Voting Agent a properly completed subsequent Ballot so as to be received before the Voting Deadline. In the case where more than one timely, properly completed Ballot is received, only the Ballot that bears the latest date will be counted.

Presumed Rejections of Plan and Cram-Down

For purposes of voting on the Plan, if any Class of Creditors votes to reject the Plan, then the Debtors will utilize the provisions of Bankruptcy Code § 1129(b) to satisfy the requirements for confirmation of the Plan over the presumed rejections of such Class.

XVI. CONFIRMATION OF THE PLAN

The Bankruptcy Court will confirm the Plan only if all of the requirements of Bankruptcy Code § 1129 are met.

Acceptance of the Plan

Under the Bankruptcy Code, acceptance of a plan by a class of claims occurs when holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims of that class that cast ballots for acceptance or rejection of the plan vote to accept the plan. Thus, acceptance of the Plan by a particular class will occur only if at least two-thirds in dollar amount and a majority in number of the holders of the claims in that class cast their Ballots in favor of acceptance. A vote may be disregarded if the Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or produced in good faith or in accordance with the provisions of the Bankruptcy Code.

Best Interests Test and Liquidation Analysis

The Bankruptcy Code provides that the Plan will not be confirmed, regardless of whether or not anyone objects to confirmation, unless the Bankruptcy Court finds that the Plan is in the "best interests" of all Classes of Claims which are impaired. The "best interests" test will be satisfied by a finding of the Bankruptcy Court that either (i) all holders of impaired Claims have accepted the Plan, or (ii) the Plan will provide such a holder that has not accepted the Plan with a recovery at least equal in value to the recovery such holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

The starting point in determining whether the Plan meets the "best interests" test is a determination of the amount of proceeds that would be generated from the liquidation of the Debtors' assets in the context of a chapter 7 liquidation. Such value must then be reduced by the costs of such liquidation, including costs incurred during the Chapter 11 Cases and allowed under chapter 7 of the Bankruptcy Code (such as professionals' fees and expenses), a trustee's fees, and the fees and expenses of professionals retained by a trustee. The potential chapter 7 liquidation distribution in respect of each Class must be further reduced by costs imposed by the delay caused by conversion to chapter 7.

The attached Liquidation Analysis demonstrates that General Unsecured Creditors would receive less in a chapter 7 liquidation compared to the Distributions contemplated by the Plan.

For the reasons set forth above, the Debtors urge all Creditors to vote in favor of the Plan because each impaired Class will receive under the Plan a recovery at least equal in value to the recovery such Class would receive pursuant to a liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

Feasibility of the Plan

Bankruptcy Code § 1129(a)(11) provides that a chapter 11 plan may be confirmed only if the Bankruptcy Court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation of the Debtors. The Debtors anticipate that they will have sufficient Cash on hand on the Effective Date, through the Exit Facility, to fund the Effective Date Payment and make all payments required to be made on the Effective Date under the Plan.

In addition, the Plan requires the Debtors to make certain payments to Class 4 creditors for two successive quarters following the Effective Date. The projections attached hereto as **Exhibit C** indicate that the Debtors can successfully make the payments required under the Plan.

For these reasons, the Debtors believe that the Bankruptcy Court will find that the Plan is feasible. In addition, the Debtors will have sufficient funds to meet all post-Confirmation Date obligations to pay for the costs of administering and fully consummating the Plan and closing the Chapter 11 Case. The Debtors believe that the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code because the Debtors will have the Cash necessary to make all the payments required under the Plan.

Classification of Claims Under the Plan

The Debtors believe that the Plan meets the classification requirements of the Bankruptcy Code which requires that a plan of reorganization place each claim into a class with other claims that are "substantially similar." The Plan establishes classes of Claims as required by the Bankruptcy Code and summarized above. Administrative Expense Claims and Priority Tax Claims are not classified.

Confirmation of the Plan If a Class Does Not Accept the Plan

The Bankruptcy Code contains provisions for confirmation of a plan even if it is not accepted by all impaired classes, as long as it is accepted by at least one impaired class of claims. **Acceptance of the Plan by an insider (as that term is defined in the Bankruptcy Code) holding a claim against the Debtors is not counted in determining whether an impaired accepting class exists.** The Plan may be confirmed under the so-called "cram-down" provisions set forth in Bankruptcy Code § 1129(b) if, in addition to satisfying the other requirements for confirmation, the Plan is determined to be "fair and equitable" and "does not discriminate unfairly" with respect to each class of Claims that has not accepted the Plan. If the holders of Claims in Class 4 or Interests in Class 5 vote to reject the Plan, then the Bankruptcy Court may only confirm the Plan if the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such Class.

Under the Bankruptcy Code, "fair and equitable" has different meanings for secured and unsecured claims. With respect to a secured claim, "fair and equitable" means (i) the impaired secured creditor retains its liens to the extent of its allowed claim and receives deferred cash payments at least equal in value to the allowed amount of its claim with a present value as of the effective date of the plan at least equal in value to such creditor's interest in the Debtors' interest in the property securing its claim, (ii) if property subject to the lien of the impaired secured creditor is sold free and clear of that lien, the lien attaches to the proceeds of the sale, and such lien proceeds are treated in accordance with clause (i) or (iii) of this paragraph, or (iii) the impaired secured creditor realizes the "indubitable equivalent" of its claim under the plan.

With respect to an unsecured claim, the "fair and equitable" standard, also known as the "absolute priority rule," requires that a dissenting class receive full compensation for its Allowed Claim before any junior class receives or retains any property under the Plan. If the holders of claims in any impaired class vote to reject the Plan, the Plan may be confirmed under Bankruptcy Code § 1129(b) if all holders of Claims junior to those of the impaired class do not receive or retain any property under the Plan.

Under the Plan, although the Persons holding the ownership interests in the Debtors immediately prior to the Effective Date will continue to hold ownership Interests, in smaller percentages, in the Reorganized Debtors after the Effective Date, the Debtors believe that the absolute priority rule is being followed because Class 4 creditors are being paid in full.

AS PRESENTED, THE ONLY CLAIMS CLASSES THAT ARE IMPAIRED ARE CLASS 3 (PREPETITION LENDER SECURED CLAIM), CLASS 4 (GENERAL UNSECURED CLAIMS) AND CLASS 5 (INTERESTS).

Confirmation Hearing

Bankruptcy Code § 1128 requires the Bankruptcy Court, after notice, to hold the Confirmation Hearing to consider confirmation of the Plan. Bankruptcy Code § 1128(b) provides that any party in interest may object to confirmation of a plan.

By order of the Bankruptcy Court dated April __, 2016, the Confirmation Hearing has been scheduled for_________, **2016** at **10:00 a.m.** before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, Alexander Hamilton U.S. Custom House, Courtroom 601, One Bowling Green, New York, New York. The Confirmation Hearing may be adjourned by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing, or any adjourned hearing. Any objection to confirmation of the Plan must (a) be in writing, (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party, (c) state with particularity the basis and nature of any objection or proposed modification, and (d) be filed with the Clerk of the Bankruptcy Court, with a copy delivered to Chambers, and served so that they are received on or before ________ __, **2016** at **4:00 p.m.,** upon (i) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attn: Gerard R. Luckman (attorneys for the Debtors); (ii) the Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, New York, New York 10014, Attn: Andrea B. Schwartz; and (iii) McDonald Hopkins LLC, 600 Superior Avenue East, Suite 2100, Cleveland, Ohio 44114, Attn: Scott N. Opincar (attorneys for the DIP Lender and the Prepetition Lender).

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. Unless an objection to confirmation is timely served and filed, it will not be considered by the Bankruptcy Court.

At the Confirmation Hearing, the Bankruptcy Court must determine whether the requirements of Bankruptcy Code § 1129 have been satisfied and, upon demonstration of such compliance, the Bankruptcy Court will enter the Confirmation Order.

XVII. CONCLUSION

This Statement was approved by the Bankruptcy Court pursuant to Bankruptcy Code § 1125. The Bankruptcy Court has determined that the Statement contains “adequate information” as that term is defined in Bankruptcy Code § 1125(a).

The Debtors believe that confirmation of the Plan is preferable to the alternatives described above because it provides the best opportunity for Distributions to General Unsecured Creditors.

[ONE SIGNATURE PAGE TO FOLLOW]

Dated: New York, New York
April 12, 2016

SG BLOCKS, INC.

By: /s/ Paul Galvin
Name: Paul Galvin
Title: Chief Executive Officer

Dated: New York, New York
April 12, 2016

SG BUILDING BLOCKS, INC.

By: /s/ Paul Galvin
Name: Paul Galvin
Title: Chief Executive Officer

Dated: New York, New York
April 12, 2016

ENDAXI INFRASTRUCTURE GROUP, INC.

By: /s/ Paul Galvin
Name: Paul Galvin
Title: Chief Executive Officer

SilvermanAcampora LLP
Attorneys for the Debtors.
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Gerard R. Luckman
Brian Powers

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
-------------------------------------X

In re:	Chapter 11
SG BLOCKS, INC., *et al.,*	Case No.: 15-12790 (JLG)
Debtors.	(Jointly Administered)

-------------------------------------X

AMENDED PLAN OF REORGANIZATION FOR
SG BLOCKS, INC., *ET AL.* UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

SilvermanAcampora LLP
Attorneys for the Debtors
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Gerard R. Luckman
Brian Powers

Dated April 12, 2016

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

------------------------------------- X

In re:	Chapter 11
SG BLOCKS, INC., *et al.,*	Case No.: 15-12790 (JLG)
Debtors.	(Jointly Administered)

------------------------------------- X

PLAN OF REORGANIZATION FOR
SG BLOCKS, INC., *ET AL.* UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

This Plan of Reorganization is proposed and filed by SG Blocks, Inc., SG Building Blocks, Inc. and Endaxi Infrastructure Group, Inc., the above-captioned debtors and debtors-in-possession, pursuant to chapter 11 of the Bankruptcy Code.[1] The Plan provides for the reorganization and restructuring of the Debtors, the payment of Allowed Claims consistent with the distribution scheme set forth in the Bankruptcy Code, and procedures for the resolution of Disputed Claims. The Plan provides that holders of Allowed Claims against the Debtors will receive distributions of Cash on the Effective Date, and after the Effective Date, in full satisfaction of their Allowed Claims, as set forth below.

ARTICLE I

DEFINITIONS

For purposes of the Plan, the following terms shall have the meanings set forth below. Terms used in this Plan which are defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning set forth in the Bankruptcy Code or the Bankruptcy Rules unless otherwise defined in this Plan. The meaning of the defined terms shall be equally applicable to the singular and plural forms of the terms defined, unless a different meaning is clearly required by and explained in the text.

1.01 "Administrative Expense" shall mean any cost or expense of administration of the Chapter 11 Cases entitled to priority in accordance with the provisions of Bankruptcy Code §§ 503(b) and 507(a)(1), including, without limitation: (i) Fee Claims; (ii) Claims relating to goods received by the Debtors within twenty (20) days before the Petition Date in the ordinary course of the Debtors' business; and (iii) any actual, necessary costs and expenses of preserving the Debtors' Estates and of operating the Debtors' business (but only to the extent they are due or payable on or before the Effective Date).

1.02 "Affiliate" shall have the meaning set forth in Bankruptcy Code §101(2).

1.03 "Allowed" shall mean a Claim, other than an Administrative Expense or Interest in the Debtors, which is: (i) listed in the Debtors' Schedules filed in the Chapter 11 Cases as of the Effective Date, and not listed in the Schedules as disputed, contingent, unliquidated or unknown and as to which no objection to the allowance thereof is filed on or prior to the Objections Bar Date; (ii) set forth in a proof of Claim timely and properly filed in the Chapter 11 Cases on or before the date fixed by the Bankruptcy Court (or by applicable rule or statute) as the last day for filing such proof of Claim, or late filed with leave of the Bankruptcy Court after notice and opportunity for hearing given to counsel to the Debtors, and as to which no objection to the allowance thereof is filed on or prior to the Objections Bar Date; or (iii) determined to be Allowed by a Final Order of the Bankruptcy Court. To the extent permitted under Bankruptcy Code §506(b), an Allowed Claim shall include unpaid interest on the Claim and any reasonable unpaid fees, costs or charges provided for in the agreements which govern such Claim arose. Any Claim which has been or is hereafter listed in the Schedules as contingent, unliquidated or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered an Allowed Claim and shall be expunged without further action by the Debtors or the Reorganized Debtors.

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[1] All capitalized terms used but not defined in the text of this Plan shall have the meanings set forth in Article I of the Plan.

1.04 "Allowed Administrative Expense" shall mean all or that portion of any Administrative Expense which has been Allowed by a Final Order of the Bankruptcy Court.

1.05 "Allowed General Unsecured Claim" shall mean any Allowed Claim that is not an Allowed Administrative Expense, Allowed Fee Claim, Allowed Secured Claim, Allowed Priority Tax Claim, or Allowed Priority (Non-Tax) Claim.

1.06 "Allowed Priority Claim" shall mean any Allowed Claim or portion thereof entitled to priority under Bankruptcy Code §§507(a)(3) through (a)(6).

1.07 "Allowed Secured Claim" shall mean that portion of an Allowed Claim which is secured by a valid perfected lien on property of the Debtors, to the extent of the value of the interest of the holder of such Allowed Secured Claim in the property of the Debtors as determined by the Bankruptcy Court pursuant to Bankruptcy Code §506(a), together with interest, fees, costs and charges to the extent allowed by the Bankruptcy Court under Bankruptcy Code §506(b).

1.08 "Allowed Priority Tax Claim" shall mean any Allowed Claim or portion thereof entitled to priority under Bankruptcy Code §507(a)(8).

1.09 "Avoidance Actions" shall mean (a) any and all claims, suits and causes of action now held or hereafter acquired by the Debtors, the Estates, the Reorganized Debtors, or the Debtors' creditors under Bankruptcy Code §§544, 547, 548, 549, 550, or 553 and (b) any claim against any transferee of a transfer avoidable under Bankruptcy Code §549 received from the Debtors from and after the Petition Date, but prior to the Effective Date.

1.10 "Bankruptcy Code" shall mean title 11 of the United States Code, as amended.

1.11 "Bankruptcy Court" shall mean the United States Bankruptcy Court for the Southern District of New York, in which the Debtors' Chapter 11 Cases are pending, and the United States District Court for the Southern District of New York to the extent that in respect of the Chapter 11 Cases the District Court may have withdrawn reference, shall have determined to exercise original jurisdiction, or shall have sole authority to enter a final order or judgment.

1.12 "Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure.

1.13 "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday as defined in Bankruptcy Rule 9006(a).

1.14 "Casano" shall mean Frank Casano, one of the Debtors' prepetition secured lenders.

1.15 "Cash" shall mean cash and cash equivalents, and other readily marketable securities or instruments, including, but not limited to, bank deposits, checks and other similar items.

1.16 "Chapter 11 Cases" shall mean the Debtors' jointly administered chapter 11 cases filed in the Bankruptcy Court, Case Nos. 15-12790 (JLG), 15-12791 (JLG), and 15-12792 (JLG), administered under Case No. 15-12790 (JLG).

1.17 "Claim" shall mean a claim against the Debtors, as defined in Bankruptcy Code §101(5).

1.18 "Claimant" shall mean the holder of a Claim.

1.19 "Class" shall mean any class into which Allowed Claims and Allowed Interests are classified pursuant to Article II of the Plan.

1.20 "Confirmation Date" shall mean the date the Confirmation Order is entered in the Chapter 11 Case.

1.21 "Confirmation Hearing" shall mean the hearing or hearings held by the Bankruptcy Court to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.22 "Confirmation Order" shall mean an Order of the Bankruptcy Court confirming the Plan in accordance with Bankruptcy Code §1129.

1.23 "Creditor" shall have the meaning set forth in Bankruptcy Code §101(10).

1.24 "Debtors" shall mean SG Blocks, Inc., SG Building Blocks, Inc., and Endaxi Infrastructure Group, Inc., as debtors and debtors in possession.

1.25 "DHIC" shall mean Dillon Hill Investment Company, LLC, one of the Debtors' prepetition secured lenders.

1.26 "Dillon" shall mean Dillon Hill Capital, LLC, one of the Debtors' prepetition secured lenders.

1.27 "DIP Financing Order" shall mean the Bankruptcy Court's final order authorizing the Debtors to use Prepetition Lender's cash collateral and to obtain debtor in possession financing from the DIP Lender (ECF Doc. No. 25).

1.28 "DIP Lender" shall mean Hillair Capital Investments L.P. in its capacity as debtor in possession lender to the Debtors pursuant to a Debtor in Possession Credit Agreement, Senior Security Agreement, and the DIP Financing Order.

1.29 "Disallowed Claim" shall mean any Claim or portion of a Claim which has been disallowed by a Final Order of the Bankruptcy Court.

1.30 "Disputed Claim" shall mean any Claim, proof of which was timely and properly filed, and (a) which is listed on the Schedules as unliquidated, disputed, or contingent, and which has not been resolved by written agreement between the Debtors and the Claimant or by an order of the Bankruptcy Court, (b) which is subject to a dispute to the extent that the Debtors or the Reorganized Debtors have asserted a claim against the holder of the Disputed Claim, or (c) as to which the Debtors have interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order. Prior to the filing of an objection to a Claim, or the expiration of the time within which to object to such Claim set forth in the Plan or otherwise established by order of the Bankruptcy Court, for purposes of the Plan, a Claim shall be considered a Disputed Claim if (x) the amount of the Claim specified in the proof of Claim exceeds the amount of the Claim scheduled by the Debtors as other than disputed, contingent or unliquidated, or (y) the Claim is not listed on the Schedules.

1.31 “Disputed Claims Reserve” shall mean the reserves to be established by the Debtors or the Reorganized Debtors on account of Disputed Administrative Expenses, Disputed Priority Claims, and Disputed Unsecured Claims to be used to make pro rata Distributions to holders of Disputed Administrative Expenses, Disputed Claims and Undetermined Claims in the event they become Allowed Claims.

1.32 “Distribute” or “Distribution” shall mean a payment by the Debtors or the Reorganized Debtors under the terms of the Plan.

1.33 “Distribution Date” shall mean any date, subsequent to the Effective Date, on

which a Distribution under the Plan is to be made to the holders of Allowed Claims.

1.34 “Effective Date” shall mean the first day on which the Confirmation Order has

become a Final Order and on which all of the conditions to the Effective Date in the Plan have been satisfied or waived.

1.35 “Effective Date Payment” shall mean the payment from the funds made available under the Exit Facility to pay the obligations to the DIP Lender, Administrative Expenses, any priority claims, and an initial fifty (50%) percent distribution to General Unsecured Creditors on Allowed General Unsecured Claims.

1.36 “Endaxi” shall mean Endaxi Infrastructure Group, Inc.

1.37 “Estates” shall mean the Debtors’ chapter 11 estates created on the Petition Date under Bankruptcy Code §541.

1.38 “Exit Facility” shall mean the senior secured convertible working capital facility in the approximate amount of $1.1 million provided to the Reorganized Debtor by Hillair to refinance the obligations to the DIP Lender, pay Administrative Expenses, provide an initial fifty (50%) percent distribution to General Unsecured Creditors and fund anticipated working capital needs. The Exit Facility shall be convertible into shares of the Debtor's stock on the basis of 1.25 shares per $1.00 of convertible debt. The Exit Facility shall be subordinate to the specific liens granted to IPFS Corporation on account of insurance premium financing entered into by the Debtors.

1.39 “Fee Claims” shall mean claims by professionals retained by the Debtors during the Chapter 11 Cases for the payment of fees and the reimbursement of expenses incurred prior to the Effective Date.

1.40 “Final Order” shall mean: (i) an order or a judgment of the Bankruptcy Court; or (ii) a stipulation or other agreement entered into which is “so ordered” by the Bankruptcy Court, in either case the operation or effect of which has not been reversed, stayed, modified or amended and as to which (x) any appeal that has been taken has been finally determined or dismissed, or (y) the time to appeal or seek reconsideration has expired by reason of statute or otherwise and as to which no appeal or petition for review, *certiorari* or reconsideration has been taken or is pending (or if such appeal or petition has been granted, it has been finally decided), as a result of which such order, judgment, stipulation or agreement shall have become final in accordance with applicable law.

1.41 “General Unsecured Claim” means an Allowed Claim that is not an Administrative Expense, a Priority (Non-Tax) Claim, Priority Tax Claim, Fee Claim, or Secured Claim.

1.42 “Hillair” shall mean Hillair Capital Investments L.P., in its capacity as prepetition secured lender.

1.43 "Interest" shall mean any rights of a shareholder in respect of an equity interest in each of the Debtors.

1.44 "Lien" shall have the meaning set forth in Bankruptcy Code §101(37).

1.45 "Masterson" shall mean Scott Masterson, one of the Debtors' prepetition secured lenders.

1.46 "Nuccitelli" shall mean Marc Nuccitelli, one of the Debtors' prepetition secured lenders.

1.47 "Objections Bar Date" shall mean the deadline for the Debtors or the Reorganized Debtors to file objections to Claims, which deadline shall be the first Business Day that is ninety (90) days after the Effective Date of the Plan.

1.48 "Person" shall have the meaning set forth in Bankruptcy Code §101(41).

1.49 "Petition Date" shall mean October 15, 2015.

1.50 "Prepetition Lender" shall collectively mean Hillair, Dillon, DHIC, Casano, Masterson, and Nuccitelli, in their role as prepetition secured lender to the Debtors.

1.51 "Prepetition Lender's Lien" shall mean the lien granted to the Prepetition Lender on account of the Prepetition Lender Secured Claim contained in the relevant loan documents evidencing the Prepetition Lender Secured Claim, and in the DIP Financing Order.

1.52 "Prepetition Lender Secured Claim" shall mean the Allowed Secured Claim of Prepetition Lender, which is secured by a valid first-priority lien on substantially all of the Debtors' assets.

1.53 "Plan" shall mean this Plan of Reorganization, as it may be amended or modified.

1.54 "Priority (Non-Tax) Claims" shall mean any Claim that is entitled to priority status in accordance with Bankruptcy Code §507(a), other than Priority Tax Claims and Administrative Expenses.

1.55 "Priority Tax Claims" shall mean any Claim for taxes entitled to priority status in accordance with Bankruptcy Code §§502(i) or 507(a)(8), but specifically excludes any penalty assessed with respect to such taxes.

1.56 "Pro Rata Share" shall mean the proportion that the Allowed Claim bears to the sum of all Allowed Claims, Disputed Claims and Undetermined Claims of that particular Class or in the case of Interests the proportion of Interests held by such holder in relation to the sum of al outstanding Interests.

1.57 "Released Parties" shall have the meaning set forth in Article X of the Plan.

1.58 "Released Claims" shall mean the claims released under Article X of the Plan.

1.59 "Reorganized Debtors" shall mean the Debtors after the Effective Date.

1.60 "Schedules" shall mean the schedules of assets and liabilities, lists and statement of financial affairs and executory contracts filed by the Debtors with the Bankruptcy Court, as they may be amended pursuant to the Bankruptcy Rules.

1.61 "Securities Act" shall mean the Securities Act of 1933, as amended.

1.62 "Unclaimed Property" shall mean any Cash (together with any interest earned thereon) unclaimed on the later of the 180th day following the Effective Date or the last Distribution Date. Unclaimed Property shall include checks (and the funds represented thereby): (i) which have been returned as undeliverable without proper forwarding addresses; (ii) which have not been paid; or (iii) which were not mailed or delivered because of the absence of a proper address for the Claimant.

1.63 "Undetermined Claim" shall mean any Claim that is (i) a Disputed Claim or (ii) an unliquidated or contingent Claim.

1.64 "Unsecured Creditor" shall mean the holder of an Unsecured Claim.

1.65 "U.S. Trustee" shall mean the United States Trustee for Region 2.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

2.01 General Rules of Classification. A Claim or Interest is classified in a particular Class for voting and distribution purposes only to the extent the Claim or Interest qualifies within the description of that Class, and is classified in other Classes to the extent the Claim or Interest qualifies within the description of such Classes.

2.02 Administrative Expenses and Priority Tax Claims. Administrative Expenses and Priority Tax Claims have not been classified and are excluded from the Classes of Claims in accordance with Bankruptcy Code §1123(a)(1).

2.03 Satisfaction of Claims and Interests. The treatment to be provided for Allowed Claims and Interests under this Plan and the consideration provided under this Plan shall be in full satisfaction, settlement, release and discharge of all Claims and Interests against the Debtors and their property.

2.04 Bar Dates for Claims. Pursuant to the Bankruptcy Court's Order, dated December 18, 2015 (ECF Doc. No. 33), all non-governmental unit Claims against the Debtors, including claims under Bankruptcy Code §503(b)(9) must be filed on or before January 25, 2016, and all Claims of governmental units must be filed on or before April 12, 2016. Claims arising from the rejection of executory contracts and unexpired leases shall be governed by the specific orders of the Bankruptcy Court regarding the assumption or rejection of executory contracts and unexpired leases and Article VI of the Plan.

2.05 Bar Date for Fee Claims. The Confirmation Order, or the order scheduling the Confirmation Hearing, shall provide a deadline for the filing of requests for payment of Fee Claims incurred prior to the Confirmation Date. Any Person that fails to file an application for the payment of professional fees and expenses on or before the time and date established in the Confirmation Order or the order scheduling the Confirmation Hearing shall be forever barred from seeking payment or reimbursement from the Debtors, their Estates or the Reorganized Debtors. Counsel for the DIP Lender shall not be required to file an application for payment of its legal fees and expenses, other than in accordance with paragraph 14 of the DIP Financing Order.

2.06 Acceptance of Classification. Any holder of a Claim or Interest who fails to object in writing to the classification of Claims and Interests provided in the Plan, and who has not filed an objection with the Bankruptcy Court and served the objection upon counsel to the Debtors, counsel to Prepetition Lender and the U.S. Trustee at least ten (10) days prior to the Confirmation Hearing shall be deemed to have accepted the classification set forth in the Plan.

2.07 Classification. For purposes of the Plan, all Allowed Claims shall be placed in the following Classes:

- Class 1 (Allowed Priority (Non-Tax) Claims)
- Class 2 (Allowed DIP Lender Secured Claim)
- Class 3 (Allowed Prepetition Lender Secured Claim)
- Class 4 (General Unsecured Claims)
- Class 5 (Interests in the Debtors)

ARTICLE III

TREATMENT OF CLASSES

3.01 Administrative Expenses. Administrative Expenses are not impaired. Except with respect to Administrative Expenses Allowed under Bankruptcy Code §503(b)(9), which shall be paid as soon as reasonably practicable after the Effective Date or upon such other terms as may be agreed to by the holder thereof and the Debtors, Allowed Administrative Expenses, including Fee Claims, shall be paid by the Debtors or the Reorganized Debtors on the later to occur of (a) the Effective Date, and (b) the date such Claim becomes Allowed by a Final Order of the Bankruptcy Court, or as soon as practicable thereafter, or upon such other terms as may be agreed to by the holder thereof and the Debtors. In the event of any subsequent conversion of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, all payments on account of any Allowed Administrative Expenses shall be deemed to have been made in the ordinary course of the Debtors' business and shall not be deemed to be avoidable transfers under Bankruptcy Code §549.

3.02 U.S. Trustee Fees. Statutory fees, and any applicable interest thereon, are all fees payable pursuant to Chapter 123 of Title 28, United States Code, including, but not limited to, all fees required to be paid by 28 U.S.C. §1930(a)(6) plus any interest due and payable under 31 U.S.C. §3717 (**"U.S. Trustee Fees"**). U.S. Trustee Fees will accrue and be timely paid until the Case is closed, dismissed, or converted to another chapter under the Bankruptcy Code. Any U.S. Trustee Fees owed on or before the Effective Date of this Plan will be paid in full on the Effective Date of the Plan.

3.03 Priority Tax Claims. Priority Tax Claims are not impaired. All Allowed Priority Tax Claims shall be paid on the Effective Date unless such claims are Allowed in an amount significantly greater than estimated or in an amount that would jeopardize a recovery to unsecured creditors, then in that case Priority Tax Claims will be paid over a five (5) year period in accordance with Bankruptcy Code §1129(a), at the Federal Judgment Rate. Holders of Priority Tax Claims shall not be entitled to vote on the Plan.

3.04 Class 1 Priority (Non-Tax) Claims. Allowed Priority (Non-Tax) Claims shall be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable. The Debtors do not believe any such claim exists. In accordance with Bankruptcy Code § 1126(f), holders of Class 1 Claims shall not be entitled to vote on the Plan and shall be deemed to have accepted the Plan. Class 1 Claims are not impaired.

3.05 Class 2 DIP Lender Secured Claim shall be paid in full on the Effective Date from the Effective Date Payment.

3.06 Class 3 Prepetition Lender Secured Claim. Holders of the Allowed Prepetition Lender Secured Claim, shall receive one hundred (100%) percent of a newly issued convertible preferred stock on the basis of one share of preferred stock per dollar of Allowed Petition Lender Secured Claim. The preferred stock shall vote with the common stock of the Reorganized Debtor on an as converted basis, shall receive dividends with the common stock, and shall have a $1.00 per share liquidation preference. The preferred stock is convertible into common stock on a 1:1 basis and, if converted on the Effective Date, would convert into 82.5% of the common stock of the Reorganized Debtor, after taking into account common stock issued to holders of Class 5 Interests and the Management Options (defined below), but before any conversion of the Exit Facility. On the Effective Date, the Reorganized Debtor's management will receive options (the "Management Options") to acquire 10% the Reorganized Debtor's new common stock, calculated on a fully diluted basis assuming conversion of all of the preferred stock but not the Exit Facility. The Management Options will be subject to certain vesting conditions. The holder of the Exit Facility also retains conversion rights that will dilute the ownership rights of holders of Class 3 Claims and Class 5 Interests. Hillair shall be entitled to designate three members of the Reorganized Debtors' Board of Directors. Dillon, DHIC, Casano, Masterson and Nuccitelli will be granted Board of Directors observation rights by the Reorganized Debtor, subject to certain share ownership requirements to be determined by the Reorganized Debtor. All shares of new common or preferred stock issued under the Plan will be issued without registration under the Securities Act or any similar federal, state, or local law in reliance upon either section 1145 of the Bankruptcy Code or Section 4(a)(2) of the Securities Act, as amended. The Class 3 Prepetition Lender Secured Claim is impaired.

3.07 Class 4 General Unsecured Claims. Class 4 Claims are comprised of the Allowed Claims of General Unsecured Creditors. Each holder of an Allowed General Unsecured Claim shall receive a Distribution of one hundred (100%) percent of its Allowed Claim, plus post-petition interest calculated at the Federal judgment rate, payable as follows: fifty (50%) percent of its Allowed Claim on the Effective Date as part of the Effective Date Payment, twenty five (25%) percent at the conclusion of the next full fiscal quarter of the Reorganized Debtor after the Effective Date, and the remaining twenty five (25%) percent of its Allowed Claim, plus any post-petition interest owed, at the conclusion of the next full fiscal quarter of the Reorganized Debtor after the Effective Date, and the remaining twenty five (25%) percent of its Allowed Claim at the conclusion of the second full fiscal quarter of the Reorganized Debtor after the Effective Date. Class 4 Claims are impaired.

3.08 Class 5 Interests. Shares of stock held by each holder of Interests in the Debtors shall be cancelled and replaced by such holder's pro rata share of 100% of the new common stock in the Reorganized Debtors that is outstanding at the Effective Date. Such common stock ownership in the Reorganized Debtor is subject to dilution by conversion of the preferred stock as described in Section 3.06. Assuming 100% of such preferred stock is converted and taking into account the Management Options as if fully exercised, the holders of the Class 5 Interests would hold 7.5% of the common stock of the Reorganized Debtor. The ownership interest of the holders of the Class 5 Interests is subject to further dilution upon the conversion of the Exit Facility into new common stock. Class 5 Interests are impaired.

ARTICLE IV

CLAIMS AND INTERESTS IMPAIRED UNDER THE PLAN

4.01 Claims and Interests in Classes 3, 4 and 5 are impaired under the Plan, and are entitled to vote on the Plan. Claims in Classes 1 and 2 are not impaired under the Plan, and are not entitled to vote on the Plan.

4.02 Pursuant to Bankruptcy Code §1126(c), a Class of Claims shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the holders of Allowed Claims in such Class that vote on the Plan. Pursuant to Bankruptcy Code §1126(d), holders of Interest in Class 5 shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in amount of the Allowed Interests of such Class 5.

4.03 Classes 3, 4 and 5 are currently entitled to vote to accept or reject the Plan. To the extent that any Class entitled to vote rejects the Plan, the Debtors intend to seek confirmation of the Plan in accordance with Bankruptcy Code §1129(b).

4.04 The Plan shall serve as a motion by the Debtors seeking entry of an order substantively consolidating each of the Estates of the Debtors into a single consolidated Estate solely for the limited purposes of voting, confirmation, and distribution. For the avoidance of doubt, the Plan shall not serve as a motion by the Debtors seeking entry of an order substantively consolidating the Debtors for any other purposes. **Moreover, any alleged defaults under any applicable agreement with the Debtors, the Reorganized Debtors, or their respective affiliates arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date.**

ARTICLE V

MEANS FOR IMPLEMENTATION OF THE PLAN

5.01 Payments on the Effective Date. No later than two (2) Business Days before the Confirmation Hearing, the Debtors shall provide proof that they will have sufficient funds to make the Effective Date Payment required under the Plan.

The payments under the Plan will be made from (a) Effective Date Payment, and (b) the Cash derived from the Debtors' operations and/or the Reorganized Debtor's operations.

Except for Allowed Administrative Expenses held pursuant to Bankruptcy Code §503(b)(9), which shall be paid as soon as reasonably practicable after the Effective Date or upon such other terms as may be agreed to by the holder thereof and the Debtors, on the Effective Date the Debtors shall have the Cash necessary to pay in full Allowed Administrative Expenses, including Allowed Fee Claims (except to the extent that the holders of Administrative Expense or Fee Claims agree to different treatment), except as otherwise provided in the Plan, Allowed Priority (Tax) Claims and Priority (Non-Tax) Claims.

5.02 Payments after the Effective Date. To the extent necessary to pay Allowed Claims under the Plan, the Reorganized Debtor will pay the remaining fifty (50%) percent of the Allowed Class 4 Claims from their cash flow in accordance with the Plan.

5.03 Release of Avoidance Actions. On the Effective Date, the Debtors, on behalf of themselves and their Estates shall release any and all Avoidance Actions and the Debtors and the Reorganized Debtors, and any of their successors and assigns and any entity acting on behalf of the Debtors or the Reorganized Debtors shall be deemed to have waived the right to pursue any and all Avoidance Actions.

5.04 Reserves. On the Effective Date, or as soon thereafter as is reasonably practical, the Debtors shall establish and maintain adequate reserves for Disputed Claims.

On the later to occur of (a) the Effective Date, and (b) the date such Claim becomes Allowed by a Final Order of the Bankruptcy Court, or as soon thereafter is reasonably practicable, the Debtors shall use available Cash to pay in full, or establish appropriate reserves for Allowed Administrative Expenses, including Allowed Fee Claims, except as otherwise agreed to by the holder thereof and the Debtors. The Debtors shall pay all Priority Tax Claims, and Priority (Non-Tax) Claims, in accordance with Article III of the Plan.

5.05 Investments by the Debtors. All Cash held by the Debtors, whether held in investment accounts, bank accounts, any Disputed Claims Reserve, or any escrow accounts, shall be invested in accordance with Bankruptcy Code §345 in a financial institution that is an authorized depository under the U.S. Trustee Operating Guidelines.

5.06 Delivery of Distributions. Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the holders of Allowed Claims shall be made at (a) the address of each holder as set forth in the Schedules, unless superseded by the address set forth on proofs of Claim filed by such holder, or (b) the last known address of such holder if no proof of Claim is filed or if the Debtors have been notified in writing of a change of address.

5.07 Undeliverable Distributions and Unclaimed Property. If any distribution made by the Debtors or the Reorganized Debtor, as applicable, is returned as undeliverable, the Debtors or the Reorganized Debtors, as applicable, may, in their sole discretion, make such efforts to determine the current address of the Holder of the Claim with respect to which the distribution was made, but no distributions to any Holder of an Allowed Claim will be made until the Debtors or the Reorganized Debtors, as applicable, have determined the current address of the Holder of such Allowed Claim, at which time the distribution will be made without interest. The Debtors or the Reorganized Debtors, as applicable, shall have sole discretion to determine how to make distributions in the most efficient and cost-effective manner. Amounts in respect of any undeliverable distributions made by the Debtors or the Reorganized Debtor, as applicable, shall be returned to, and held in trust by, the Debtors or the Reorganized Debtor, as applicable, until the distributions are claimed, or are deemed to be Unclaimed Property upon the expiration of six (6) months from the date of the return of the undeliverable distribution. Unclaimed Property shall revert to the Reorganized Debtors in accordance with the provisions of the Plan.

5.08 Record Date for Distributions. Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the date of the entry of the Confirmation Order will be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the date of the entry of the Confirmation Order. The Debtors and Reorganized Debtors shall have no obligation to recognize any transfer of any Claim occurring after the date of the entry of the Confirmation Order. In making any Distribution with respect to any Claim, the Debtors shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Person that is listed on the proof of Claim filed with respect thereto, or on the Schedules, as the holder thereof as of the close of business on the date of the entry of the Confirmation Order, and upon such other evidence or record of transfer or assignment that are known to the Debtors as of the date of the entry of the Confirmation Order.

5.09 Distributions to Holders of Claims — Generally.

(a) Distributions on Account of Allowed Claims Only. Except as otherwise provided in this Plan, Disputed Claims shall not be entitled to any Distribution until such Disputed Claim becomes an Allowed Claim. All Claims of any Person from which property is sought by the Debtors, or the Reorganized Debtors, as applicable, under Bankruptcy Codes §§ 542, 543, 550, or 553, or that the Debtors, or the Reorganized Debtors, allege is a transferee of a transfer that is avoidable under Bankruptcy Code §§ 544, 545, 547, 548, 549, or 553 shall be disallowed if such Person or transferee has failed to turnover such property to the Reorganized Debtors.

(b) Method of Cash Distributions. Any payment of Cash to be made pursuant to the Plan will be in U.S. dollars and may be made by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

(c) Distributions on Non-Business Days. Any payment or Distribution due on a day other than a Business Day may be made, without interest, on the next Business Day.

(d) No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution (of a value set forth herein or in the Disclosure Statement) in excess of the Allowed amount of such Claim.

(e) Interest on Claims. Except as specifically provided for in the Plan or the Confirmation Order, interest shall not accrue on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim, other than the Claim of the DIP Lender in accordance with the DIP Financing Order. Interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Petition Date to the date a final Distribution is made thereon if and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided herein or in a Final Order of the Bankruptcy Court, no prepetition Claim shall be allowed to the extent that it is for postpetition interest or other similar charges.

(f) Disputed Payments. If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Reorganized Debtors may, in lieu of making such Distribution to such Person, make such Distribution into an escrow account or hold such Distribution in reserve until the disposition thereof shall be determined by Bankruptcy Court order, or by written agreement among the interested parties to such dispute.

(g) Withholding Taxes. Any federal or state withholding taxes or other amounts required to be withheld under any applicable law may be deducted and withheld from any Distributions under the Plan. All Persons holding Claims shall be required to provide any information necessary to effect the withholding of such taxes. The Reorganized Debtors may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Reorganized Debtors to the appropriate authority. If the holder of an Allowed Claim fails to provide the information necessary to comply with any withholding requirements of any governmental unit within ninety (90) days after the date of first notification to the holder of the need for such information, or for the Cash necessary to comply with any applicable withholding requirements, then such holder's Distribution shall be treated as Unclaimed Property herein or the amount required to be withheld may be so withheld and turned over to the applicable authority.

(h) Time Bar to Cash Payments by Check. Checks issued by the Reorganized Debtors on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to this Section may be made directly to the Reorganized Debtors by the holder of the Allowed Claim to whom the check was originally issued. Any Claim with respect to such voided check must be made in writing, on or before the later of the first anniversary of the Effective Date, or the six (6) month anniversary of the date on which the Distribution was made. After that date, all Claims with respect to voided checks shall be discharged and forever barred and the proceeds of those checks shall be deemed Unclaimed Property in accordance with Bankruptcy Code §347(b) and be distributed as provided herein.

(i) No Payments of Fractional Dollars. Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole dollar.

(j) No Payment of Fractional Shares. Notwithstanding any other provision of the Plan to the contrary, no payment of fractional shares of stock shall be made pursuant to the Plan. Whenever any payment of a fraction of a share of stock under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole share.

(k) Minimum Distributions. Notwithstanding anything herein to the contrary, the Reorganized Debtors shall not be required to make distributions or payments of less than $25.00, and shall not be required to make partial distributions or payments of fractions of dollars. Any Holder of an Allowed Claim whose aggregate distribution under this Plan is less than $25.00 shall forfeit, at the option of the Reorganized Debtors, such amount to, and such amount shall vest in, the Debtors for distribution in accordance with the terms of the Plan.

(l) Setoff and Recoupment. The Reorganized Debtors may, but shall not be required to, setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature that the Reorganized Debtors or the Estates may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Estates, or the Reorganized Debtors, of any right of setoff, recoupment claims, rights or Avoidance Actions that the Debtors, the Estates, or the Reorganized Debtors, or any of their successors may possess against such holder. Any setoff or recoupment shall only be made after the affected creditor is provided not less than five days notice.

5.10 Quarterly Reports. Until the Chapter 11 Cases are closed, the Reorganized Debtors shall file quarterly reports setting forth (a) the status of Distributions to holders of Allowed Class 4 Claims, and (b) the status of any Avoidance Actions. The quarterly reports shall be filed on or before the 15th day of July, October, January and April. In addition, the Reorganized Debtors shall maintain an accurate register of the General Unsecured Claims.

5.11 Vesting of Assets. As of the Effective Date, pursuant to provisions of Bankruptcy Code §§ 1141(b) and (c), all property and assets of the Debtors shall be transferred to and shall vest in the Reorganized Debtors free and clear of all Liens, Claims and Interests, except as otherwise expressly provided in this Plan, and the Confirmation Order.

5.12 Continuing Existence. From and after the Effective Date, the Reorganized Debtors will continue in existence and shall continue normal operations of their business as corporations under applicable law.

ARTICLE VI

EXECUTORY CONTRACTS AND LEASES

6.01 Any executory contract or unexpired lease of the Debtors which has not been assumed or rejected by Final Order of the Bankruptcy Court, or which is not the subject of a pending motion to assume or reject on the Confirmation Date, shall be deemed assumed by the Debtors on the Effective Date. Simultaneously with service of the Plan and Disclosure Statement, the Debtors shall provide a notice to all counter-parties to executory contracts proposed to be assumed, substantially in the former annexed hereto as **Exhibit 1.** Such counter-parties shall have until seven (7) days prior to the Confirmation Hearing to file an objection to the proposed cure amount provided in such notice. All objections to cure amounts shall be heard at the Confirmation Hearing. To the extent that the D&O Liability Insurance Policies are considered to be Executory Contracts, notwithstanding anything in the Plan to the contrary, effective as of the Effective Date, the Reorganized Debtors shall be deemed to have assumed all unexpired D&O Liability Insurance Policies with respect to the Debtors' directors, managers, officers, and employees serving on or prior to the Petition Date pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtors' assumption of each of the unexpired D&O Liability Insurance Policies. On the Effective Date, the Debtors shall be deemed to have assumed all of the Debtors insurance policies.

6.02 Any entity with a Claim that arises from the rejection of an executory contract or unexpired lease must file its Claim within thirty (30) days after the later of the date of the order rejecting the executory contract or unexpired lease and the Confirmation Date, and shall have the same rights as a Class 4 Claimant to the extent such Claim becomes an Allowed General Unsecured Claim. **Any Claims arising from the rejection of an executory contract or unexpired lease not filed with the Bankruptcy Court within such time will be automatically treated as a Disallowed Claim, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Reorganized Debtors, the Estates, or property of the foregoing parties, without the need for any objections by the Debtors or the Reorganized Debtors, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other entity, and any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or any proof of Claim to the contrary.**

ARTICLE VII

PROCEDURE FOR RESOLVING DISPUTED CLAIMS

7.01 Disputed Claim Reserves. Except as provided for below, the Debtors shall set aside and reserve for the benefit of each holder of a Disputed Claim an amount equal to the Distributions to which the holder of such Disputed Claim would be entitled if such Disputed Claim were an Allowed Claim, in an amount equal to the amount of such Claim as estimated by the Bankruptcy Court pursuant to an order. Such reserved amounts, and the difference between the amount so reserved for each such Claim and the amount of federal, state and local taxes paid by the Debtors with respect to such Claim shall constitute the maximum Distribution amount to which the holder of such Claim may ultimately become entitled to receive.

7.02 Distributions to Holders of Allowed Claims. After the Effective Date, the Reorganized Debtors shall make one or more Distributions to holders of Allowed Claims in accordance with the Plan.

(i) Distributions on Disputed Claims. No Distributions shall be made with respect to a Disputed Claim until the resolution of such dispute by agreement with the Debtors, the Reorganized Debtors, or Final Order. On or as soon as reasonably practicable after the first Business Day of the next calendar quarter after a Disputed Claim becomes an Allowed Claim, the Debtors shall distribute to the holder thereof Cash, from the Disputed Claims Reserve, in an amount equal to the aggregate amount of Cash that would have been distributed to such holder in respect of such Claim had such Claim been an Allowed Claim, in the amount in which it is ultimately allowed.

(ii) Treatment of Excess Cash in Disputed Claims Reserve. To the extent a Disputed Claim becomes a Disallowed Claim or is reclassified, any Cash previously reserved for such portion of such Disputed Claim shall be distributed in accordance with the Plan. To the extent all payments required under the Plan have already been made, Cash previously reserved for Disputed Claims shall be paid to the Reorganized Debtor in accordance with Section 5.11 of the Plan.

7.03 Resolution of Disputed Claims. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, after the Confirmation Date the Reorganized Debtors shall have the right to make and file objections to all Claims, and shall serve a copy of each objection upon the holder of the Claim to which the objection is made, as soon as practicable, but in no event later than the Objections Bar Date. From and after the Confirmation Date, all objections shall be litigated to a Final Order except to the extent the Reorganized Debtors elect to withdraw any claim objection, or the Reorganized Debtors and the claimant elect to compromise, settle or otherwise resolve any claim objection, in which event they may settle, compromise or otherwise resolve any Disputed Claim without further approval of the Bankruptcy Court. A Disputed Claim as to which no objection is filed by the Objections Bar Date shall become an Allowed Claim.

7.04 Procedure for Omnibus Objections to Claims. The Debtors and the Reorganized Debtors are permitted to file omnibus objections to claims (an **"Omnibus Objection"**) on any grounds, including but not limited to those grounds specified in Bankruptcy Rule 3007(d). For claims that have been transferred, a notice shall be provided only to the person or persons listed as being the owner of such claim on the Debtors' claims register as of the record date as provided for in Article V of the Plan. The notice of an Omnibus Objection shall include a copy of the relevant Omnibus Objection but not the exhibits thereto listing all claims subject to the objection thereby; rather, the notice shall (i) identify the particular claim or claims filed by the claimant that are the subject of the Omnibus Objection, (ii) provide a unique, specified and detailed basis for the objection, (iii) explain the proposed treatment of the claim, (iv) notify such claimant of the steps that must be taken to contest the objection, and (v) otherwise comply with the Bankruptcy Rules.

7.05 Maintenance of Disputed Claims Reserve. To the extent that the property placed in a Disputed Claims Reserve consists of Cash, that Cash shall be deposited in an interest-bearing account in a financial institution that is an authorized depository under the U.S. Trustee Operating Guidelines. The Disputed Claims Reserve shall be closed and extinguished by the Reorganized Debtors when all Distributions and other dispositions of Cash or other property required to be made under the Plan from such reserves will have been made in accordance with the terms of the Plan.

ARTICLE VIII

RETENTION OF JURISDICTION

8.01 The Bankruptcy Court shall retain jurisdiction over the Debtors, the Reorganized Debtors, and the Chapter 11 Cases pursuant to chapter 11 of the Bankruptcy Code and for the purposes set forth in Bankruptcy Code §1127(b), including, without limitation, with respect to the following matters:

(a) to enable the Debtors or the Reorganized Debtors, as applicable, to prosecute any Avoidance Actions;

(b) to hear and determine any claim or cause of action belonging to the Estates, and any disputes concerning the classification, allowance, or estimation of any Claim;

(c) to resolve any disputes concerning any funds held in the Disputed Claims Reserve;

(d) to hear and determine all disputed issues relating to a security or ownership interest in any property of the Estates, or in any proceeds thereof;

(e) to hear and determine all Claims arising out of any agreement entered into by the Debtors after the Petition Date but prior to the entry of the Confirmation Order;

(f) to recover all assets and property of the Debtors wherever located;

(g) to alter, modify and amend the Plan pursuant to Bankruptcy Code §1127 or to remedy any defect, cure any omissions, or reconcile any inconsistency in the Plan or Confirmation Order as may be necessary to carry out the purpose and intent of the Plan, and to extent authorized by the Bankruptcy Code or Bankruptcy Rules;

(h) to hear and determine such other matters as may be provided for in the Confirmation Order and for the purposes set forth in Bankruptcy Code §§1127(b) and 1142, or in Bankruptcy Rules 1019 and 3020(d);

(i) to hear and determine all applications for compensation of professionals for services rendered and expenses incurred through the Confirmation Date, and thereafter to hear and determine any objections to compensation of professionals;

(j) to hear and determine any and all pending applications, adversary proceedings, contested matters and litigated matters;

(k) to hear and determine any disputed issues with respect to the payments to be made under the Plan;

(l) to enter orders that are necessary or appropriate to carry out the provisions of the Plan, including orders interpreting the provisions of the Plan;

(m) to enter a Final Order or decree concluding the Debtors' Chapter 11 Cases; and

(n) to determine such other matters as may be provided for in the Confirmation Order, or as may be authorized under the provisions of the Bankruptcy Code.

ARTICLE IX

CONFIRMATION AND EFFECTIVE DATE

9.01 Conditions Precedent to Confirmation. The following are the conditions precedent to the Confirmation of the Plan:

(a) The Debtors shall have entered into the Exit Facility, conditioned on the entry of the Confirmation Order, which shall provide Cash sufficient to make the Effective Date Payment;

(b) All terms, conditions and provisions of the Plan are approved in the proposed Confirmation Order;

(c) The proposed Confirmation Order shall be in form and substance acceptable to counsel to the Debtors, counsel to DIP Lender, counsel to the Exit Facility lender, and the U.S. Trustee;

(d) The Debtors shall have sufficient Cash to pay in full all Allowed Administrative Expenses, including Fee Claims; and

(e) The terms of the Confirmation Order authorize the Reorganized Debtors to issue the new common stock and new preferred stock pursuant to the exemption from registration under the Securities Act provided by either section 1145 of the Bankruptcy Code or Section 4(a)(2) of the Securities Act, as amended.

The conditions precedent set forth in subparagraphs (a), (b), (c) (d) and (e) above, may be waived by the Debtors, only upon reasonable notice to counsel to DIP Lender, counsel to the Committee, and the U.S. Trustee.

9.02 Conditions Precedent to the Effective Date. The following are the conditions precedent to the Effective Date of the Plan:

(a) The Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall have become a Final Order; and

(b) The Debtors shall have made the Effective Date Payment.

ARTICLE X

DISCHARGE OF CLAIMS, RELEASES AND EXCULPATION

10.01 Interest Holders of the Debtors shall be treated as provided in section 3.08 of this

plan.

10.02 Injunction. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, FROM AND AFTER THE CONFIRMATION DATE, ALL PERSONS ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR PROCEEDING (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE DEBTORS' PROPERTY, OR THE ESTATES BASED ON ANY ACT, OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED ON OR BEFORE THE CONFIRMATION DATE, INCLUDING ANY CLAIMS THAT ARE PROPERTY OF THE DEBTORS' BANKRUPTCY ESTATES (COLLECTIVELY, THE "RELEASED CLAIMS"); PROVIDED THAT NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL ENJOIN THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE OR LOCAL AUTHORITY, FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER PROCEEDINGS (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTORS, OR ANY OF THE DEBTORS' OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS, OR THE DEBTORS' PROPERTY, FOR ANY LIABILITY, INCLUDING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES, OR ANY STATE OR LOCAL AUTHORITY. IN ADDITION, THE INJUNCTION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

10.03 Release by the Debtors. PURSUANT TO BANKRUPTCY CODE §1123(b), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, UPON THE EFFECTIVE DATE, THE DEBTORS AND REORGANIZED DEBTORS SHALL RELEASE UNCONDITIONALLY, AND HEREBY ARE DEEMED TO FOREVER RELEASE UNCONDITIONALLY THE FOLLOWING PERSONS (COLLECTIVELY, THE "RELEASED PARTIES"): (A) THE DIP LENDER AND PREPETITION LENDER AND THEIR DIRECTORS, OFFICERS, ADVISORS, ACCOUNTANTS, CONSULTANTS, AND ATTORNEYS; AND (B) THE DEBTORS' ADVISORS, INCLUDING ATTORNEYS AND ACCOUNTANTS, FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, INCLUDING THE RELEASED CLAIMS (EXCEPT FOR THE RIGHT TO ENFORCE THE PERFORMANCE OF THEIR RESPECTIVE OBLIGATIONS, IF ANY, UNDER THE PLAN AND THE RIGHT TO FILE AN OBJECTION WITH THE BANKRUPTCY COURT WITH RESPECT TO ANY FEE CLAIMS), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE, EXCEPT FOR THOSE CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES. IN ADDITION, THE RELEASE PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

10.04 Exculpation. TO THE EXTENT PERMISSIBLE UNDER BANKRUPTCY CODE §1125(e), NEITHER THE RELEASED PARTIES NOR THEIR ADVISORS, ACCOUNTANTS, AND ATTORNEYS, SHALL HAVE OR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION DURING THE PENDENCY OF THE CHAPTER 11 CASES IN CONNECTION WITH, OR ARISING OUT OF, THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, OR THE PROPERTY OR CASH TO BE DISTRIBUTED UNDER THE PLAN; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION SHALL HAVE NO EFFECT ON THE LIABILITY OF AN ENTITY WHICH RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE RESULTED FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES, AND, IN ALL RESPECTS, THE RELEASED PARTIES SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. IN ADDITION, THE EXCULPATION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

EXCEPT FOR THE RELEASED CLAIMS, NOTHING CONTAINED HEREIN SHALL CONSTITUTE A RELEASE OF AN INDEPENDENT CLAIM HELD BY A CREDITOR OR INTEREST HOLDER AGAINST A NON-DEBTOR ENTITY OR PERSON BASED ON ACTS OR OMISSIONS UNRELATED TO THE DEBTORS OR THE CHAPTER 11 CASES. IN ADDITION, NOTHING CONTAINED HEREIN OR IN THE PLAN SHALL RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES AND SETTLEMENTS CONTAINED IN THE PLAN.

NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, ANY CLAIM ARISING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST: (I) THE DEBTORS; (II) ANY OF THE DEBTORS' SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS; AND (III) THE RELEASED PARTIES. IN ADDITION, SUBJECT TO BANKRUPTCY CODE §§ 524 AND 1141, THE RELEASES DESCRIBED HEREIN SHALL NOT PRECLUDE POLICE, FEDERAL TAX, OR REGULATORY AGENCIES FROM FULFILLING THEIR STATUTORY DUTIES.

THE RELEASES DESCRIBED IN THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER RELEASE SEPARATELY GIVEN, CONDITIONALLY OR UNCONDITIONALLY, BY THE DEBTORS TO ANY OTHER PERSON. ANY RELEASE GIVEN BY THE DEBTORS OR A PERSON WHICH IS PART OF OR SUBJECT TO A FINAL ORDER OF THE BANKRUPTCY COURT REMAINS IN FULL FORCE AND EFFECT AND ARE RATIFIED BY THE PLAN.

10.05 Persons or Entities Not Released by the Debtors. Except for the releases contained in the Plan, the Confirmation Order and the DIP Financing Order, the Debtors and the Estates are not releasing any claims or actions against any Person, or their respective affiliates, assigns, agents, directors, officers, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing.

10.06 Good Faith. The entry of the Confirmation Order shall constitute the determination by the Bankruptcy Court that the Released Parties have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code, pursuant to, among others, Bankruptcy Code §§1125(e) and 1129(a)(3), with respect to the foregoing.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.01 Headings. The headings used in the Plan are inserted for convenience or reference only and are not part of the Plan.

11.02 Notices. Notices shall be deemed given when received. All notices, requests or demands described in or required to be made in accordance with the Plan shall be in writing and shall be delivered by overnight mail and email transmission as follows:

(a) If to the Debtors or Reorganized Debtors:
SilvermanAcampora LLP
100 Jericho Quadrangle - Suite 300
Jericho, New York 11753 Attn: Gerard R. Luckman
(516) 479-6300
GLuckman@SilvermanAcampora.com

(b) If to the DIP Lender:
McDonald Hopkins LLC
600 Superior Avenue East
Suite 2100
Cleveland, OH 44114
Attn: Scott N. Opincar
(216) 348-5753
sopincar@mcdonaldhopkins.com

(c) If to the Prepetition Lender:
McDonald Hopkins LLC
600 Superior Avenue East
Suite 2100
Cleveland, OH 44114
Attn: Scott N. Opincar
(216) 348-5753
sopincar@mcdonaldhopkins.com

(d) If to the U.S. Trustee:
Office of the U.S. Trustee
201 Varick Street, Suite 1006
New York, New York 10014
Attn: Andrea B. Schwartz
(212) 510-0500
Andrea.B.Schwartz@USDOJ.gov

If to a holder of a Claim or Interest, at the address set forth in its proof of Claim or proof of Interest filed with and allowed by the Court, or, if none, at its address set forth in the Schedules prepared and filed by the Debtors with the Bankruptcy Court pursuant to Bankruptcy Rule 1007(b).

11.03 Change of Address. Any of the parties identified in section 11.02 of the Plan may change the address at which it is to receive notices under the Plan by sending written notice pursuant to the provisions of this Article to counsel to the Debtors.

11.04 Modification of the Plan. The Debtors reserve the right, in accordance with the Bankruptcy Code, upon reasonable notice to and written consent of counsel to DIP Lender and, upon reasonable notice to the Prepetition Lender, to amend or modify the Plan prior to the Confirmation Date or as soon as practicable thereafter. After the Confirmation Date, the Debtors or the Reorganized Debtors may, upon appropriate motion, notice, and order of the Court, remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

11.05 Reservation of Rights. Nothing contained herein shall prohibit the Debtors or the Reorganized Debtors from prosecuting or defending any of the rights of the Debtors' Estates, including without limitation, the Avoidance Actions.

11.06 Severability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.

11.07 Successors and Assigns. The rights and obligations of any entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such entity.

11.08 Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

11.09 The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the bankruptcy Court to close the Chapter 11 Cases.

11.10 Section and Article References. Unless otherwise specified, all references in the Plan to Sections and Articles are to Sections and Articles of the Plan.

[ONE SIGNATURE PAGE TO FOLLOW]

Dated: New York, New York
April 12, 2016

SG BLOCKS, INC.

By: /s/ Paul Galvin
Name: Paul Galvin
Title: Chief Executive Officer

Dated: New York, New York
April 12, 2016

SG BUILDING BLOCKS, INC.

By: /s/ Paul Galvin
Name: Paul Galvin
Title: Chief Executive Officer

Dated: New York, New York
April 12, 2016

ENDAXI INFRASTRUCTURE GROUP, INC.

By: /s/ Paul Galvin
Name: Paul Galvin
Title: Chief Executive Officer

EXHIBIT B

SG BLOCKS, INC., *ET AL.*

ESTIMATED LIQUIDATION ANALYSIS AS OF FEBRUARY 29, 2016

	Asset Values Upon Liquidation	Funds Available Under the Plan
Cash (including escrow)	$ 396,045.51	$ 396,045.51
Real Property	$ 0	$ 0
Accounts Receivable	$ 105,900.00	$ 105,900.00
Inventory	$ 0	$ 0
Equipment	$ 0	$ 0
Avoidance Actions	unknown	$ 0
Intellectual Property	unknown	$ 0
Exit Financing	$ 0.00	$ 1,100,000
Total	$ 501,945.51	$1,601,945.51

Type of Claim	Estimated Claims	Estimated Distribution (Liquidation)	Estimated Distribution Under The Plan
DIP Lender Claims	$ 600,000	$ 501,945.51	$ 600,000
Prepetition Lender Claims	$ 5,405,010	$ 0.00	Stock
Chapter 7 Trustee and Chapter 7 Professional fees	$ 100,000	$ 0.00	N/A
Chapter 11 professional fees	$ 100,000	$ 0.00	$ 100,000
Chapter 11 non-professional Administrative Claims	$ 490,000	$ 0.00	$ 490,000
Priority Tax Claims	$ 5,724.25	$ 0.00	$ 5,724.25
General Unsecured Claims	$ 399,218.66	$ 0.00	$ 399,218.66
Shareholder Interests	N/A	$ 0.00	Stock

EXHIBIT C

SG Blocks, Inc.
Cash Flow Projection - 2016

	Q1	Q2	Q3	Q4	2016 Totals
Loans/Investments					
Hillair DIP Financing ($600,000)					
Hillair Note ($1,120,000)					-
Hillair - Interest Payment					-
Hillair Note II ($1,000,000)					-
Hillair II - Interest Payment					-
Total Investment/Loans	-	-	-	-	-
Projects-Total Revenue	912,891.00	2,151,510.00	4,238,355.00	7,311,655.00	14,614,411.00
Projects - COGS	778,862.00	1,655,806.00	3,377,148.00	5,788,415.00	11,600,231.00
Gross Profit	134,029.00	495,704.00	861,207.00	1,523,240.00	3,014,180.00
Other Cash Received	-	-	-	-	-
SG&A Outflow:					
Personnel	117,398.00	115,200.00	115,200.00	115,200.00	462,998.00
Office	8,450.00	8,400.00	8,400.00	8,400.00	33,650.00
Administrative/Insurance	108,572.00	-	-	65,000.00	173,572.00
Market/Business Devlpmt	6,000.00	6,000.00	6,000.00	6,000.00	24,000.00
Professional Fees	68,750.00	78,250.00	73,500.00	73,500.00	294,000.00
Direct Labor - contracted	-	-	-	-	-
LC - Repayment	-	-	-	-	-
Taxes	-	-	-	-	-
Interest Payments	-	-	-	-	-
Fixed Costs	-	-	-	-	-
Other Variable	852.00	789.00	789.00	789.00	3,219.00
Total SG&A	310,022.00	208,639.00	203,889.00	268,889.00	991,439.00
Net Cash Flow	(175,993.00)	287,065.00	657,318.00	1,254,351.00	2,022,741.00
Cash Balance - Beginning	496,999.00	321,006.00	608,071.00	1,265,389.00	2,519,740.00
Change in Cash Flow	(175,993.00)	287,065.00	657,318.00	1,254,351.00	-
Cash Balance - Ending	321,006.00	608,071.00	1,265,389.00	2,519,740.00	2,519,740.00

Exhibit 2.3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---X

In re:	Chapter 11
SG BLOCKS, INC., *et al.*,	Case No.: 15-12790 (JLG)
Debtors.	(Jointly Administered)

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ORDER CONFIRMING DEBTORS' AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Upon the *Debtors' Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code,* dated as of April 15, 2016 (ECF Doc. No. 54) (the "**Plan**");[1] and upon the *Disclosure Statement for the Debtors' Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code,* dated as of April 15, 2016 (ECF Doc. No. 54) (the "**Disclosure Statement**"); and upon the Order entered by the Court on April 25, 2016, approving the Disclosure Statement (ECF Doc. No. 57) (the "**Approval Order**"); and upon the *Affidavit of Service* (ECF Doc. Nos. 58) evidencing service of the Approval Order, the Plan, the Disclosure Statement with related Exhibits, the Ballot for accepting or rejecting the Plan, and notice of proposed cure payments, as applicable (collectively, the "**Plan Documents**"), in compliance with the Approval Order, upon creditors, equity security holders, and other parties in interest; and upon the *Declaration of Paul Galvin in Support of Confirmation of Plan of Reorganization for SG Blocks, Inc., et al. under Chapter 11 of the Bankruptcy Code,* dated May 17, 2016 (ECF Doc. No. 61); and upon the *Debtors' Memorandum of Law in Support of Confirmation of Amended Plan of Reorganization for SG Blocks, Inc., et al. under Chapter 11 of the Bankruptcy Code* (ECF Doc. No. 62) filed with the Court; and upon the *Declaration of Gerard R. Luckman, Esq., Regarding Voting on and Tabulation of Ballots Accepting and Rejecting Debtors' Plan of Reorganization under Chapter 11 of the Bankruptcy Code*, dated May 17, 2016 (ECF Doc. No. 60); and all parties in interest having had an opportunity to be heard; and it having been determined that the requirements for confirmation of the Plan set forth in 11 U.S.C. § 1129(a), and all other relevant sections of the Bankruptcy Code have been satisfied; it is hereby

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

ORDERED, that the Plan is confirmed in the form annexed hereto as **Exhibit A**; and it is further

ORDERED, that the hearing on final applications for compensation for all professionals retained by the Debtors during the Chapter 11 Cases shall be held before the Court on **June 21, 2016** at **10:00 a.m.**; and it is further

ORDERED, that section 10.04 of the Plan is deleted in its entirety and replaced by the following:

> 10.04 Exculpation. TO THE EXTENT PERMISSIBLE UNDER BANKRUPTCY CODE §1125(e), NEITHER THE RELEASED PARTIES NOR THEIR ADVISORS, ACCOUNTANTS, AND ATTORNEYS, SHALL HAVE OR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION DURING THE PENDENCY OF THE CHAPTER 11 CASES IN CONNECTION WITH, OR ARISING OUT OF, THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, OR THE PROPERTY OR CASH TO BE DISTRIBUTED UNDER THE PLAN; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION SHALL HAVE NO EFFECT ON THE LIABILITY OF AN ENTITY WHICH RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE RESULTED FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES, AND, IN ALL RESPECTS, THE RELEASED PARTIES SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. IN ADDITION, THE EXCULPATION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.
>
> **NOTHING CONTAINED HEREIN SHALL CONSTITUTE A RELEASE OF AN INDEPENDENT CLAIM HELD BY A CREDITOR OR INTEREST HOLDER AGAINST A NON-DEBTOR ENTITY OR PERSON BASED ON ACTS OR OMISSIONS UNRELATED TO THE DEBTORS OR THE CHAPTER 11 CASES. IN ADDITION, NOTHING CONTAINED HEREIN OR IN THE PLAN SHALL RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.**

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES AND SETTLEMENTS CONTAINED IN THE PLAN.

NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, ANY CLAIM ARISING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST: (I) THE DEBTORS; (II) ANY OF THE DEBTORS' SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS; AND (III) THE RELEASED PARTIES. IN ADDITION, SUBJECT TO BANKRUPTCY CODE §§ 524 AND 1141, THE RELEASES DESCRIBED HEREIN SHALL NOT PRECLUDE POLICE, FEDERAL TAX, OR REGULATORY AGENCIES FROM FULFILLING THEIR STATUTORY DUTIES.

THE RELEASES DESCRIBED IN THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER RELEASE SEPARATELY GIVEN, CONDITIONALLY OR UNCONDITIONALLY, BY THE DEBTORS TO ANY OTHER PERSON. ANY RELEASE GIVEN BY THE DEBTORS OR A PERSON WHICH IS PART OF OR SUBJECT TO A FINAL ORDER OF THE BANKRUPTCY COURT REMAINS IN FULL FORCE AND EFFECT AND ARE RATIFIED BY THE PLAN.

; and it is further

ORDERED, that Bankruptcy Rule 3020(e) shall not apply to this Order and the Debtors are authorized to consummate the Plan immediately following the entry of this Order.

Dated: New York, New York
June 3, 2016

/s/ James L. Garrity, Jr.
Honorable James L. Garrity, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

SG BLOCKS, INC., *et al.*,

Debtors.

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Chapter 11

Case No.: 15-12790 (JLG)

(Jointly Administered)

AMENDED PLAN OF REORGANIZATION FOR
SG BLOCKS, INC., *ET AL.* UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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Gerard R. Luckman
Brian Powers

Dated April 12, 2016

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	Chapter 11
SG BLOCKS, INC., *et al.*,	Case No.: 15-12790 (JLG)
Debtors.	(Jointly Administered)

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PLAN OF REORGANIZATION FOR
SG BLOCKS, INC., *ET AL.* UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

This Plan of Reorganization is proposed and filed by SG Blocks, Inc., SG Building Blocks, Inc. and Endaxi Infrastructure Group, Inc., the above-captioned debtors and debtors-in-possession, pursuant to chapter 11 of the Bankruptcy Code.[1] The Plan provides for the reorganization and restructuring of the Debtors, the payment of Allowed Claims consistent with the distribution scheme set forth in the Bankruptcy Code, and procedures for the resolution of Disputed Claims. The Plan provides that holders of Allowed Claims against the Debtors will receive distributions of Cash on the Effective Date, and after the Effective Date, in full satisfaction of their Allowed Claims, as set forth below.

ARTICLE I

DEFINITIONS

For purposes of the Plan, the following terms shall have the meanings set forth below. Terms used in this Plan which are defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning set forth in the Bankruptcy Code or the Bankruptcy Rules unless otherwise defined in this Plan. The meaning of the defined terms shall be equally applicable to the singular and plural forms of the terms defined, unless a different meaning is clearly required by and explained in the text.

1.01 "Administrative Expense" shall mean any cost or expense of administration of the Chapter 11 Cases entitled to priority in accordance with the provisions of Bankruptcy Code §§ 503(b) and 507(a)(1), including, without limitation: (i) Fee Claims; (ii) Claims relating to goods received by the Debtors within twenty (20) days before the Petition Date in the ordinary course of the Debtors' business; and (iii) any actual, necessary costs and expenses of preserving the Debtors' Estates and of operating the Debtors' business (but only to the extent they are due or payable on or before the Effective Date).

1.02 "Affiliate" shall have the meaning set forth in Bankruptcy Code §101(2).

1.03 "Allowed" shall mean a Claim, other than an Administrative Expense or Interest in the Debtors, which is: (i) listed in the Debtors' Schedules filed in the Chapter 11 Cases as of the Effective Date, and not listed in the Schedules as disputed, contingent, unliquidated or unknown and as to which no objection to the allowance thereof is filed on or prior to the Objections Bar Date; (ii) set forth in a proof of Claim timely and properly filed in the Chapter 11 Cases on or before the date fixed by the Bankruptcy Court (or by applicable rule or statute) as the last day for filing such proof of Claim, or late filed with leave of the Bankruptcy Court after notice and opportunity for hearing given to counsel to the Debtors, and as to which no objection to the allowance thereof is filed on or prior to the Objections Bar Date; or (iii) determined to be Allowed by a Final Order of the Bankruptcy Court. To the extent permitted under Bankruptcy Code §506(b), an Allowed Claim shall include unpaid interest on the Claim and any reasonable unpaid fees, costs or charges provided for in the agreements which govern such Claim arose. Any Claim which has been or is hereafter listed in the Schedules as contingent, unliquidated or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered an Allowed Claim and shall be expunged without further action by the Debtors or the Reorganized Debtors.

[1] All capitalized terms used but not defined in the text of this Plan shall have the meanings set forth in Article I of the Plan.

1.04 "Allowed Administrative Expense" shall mean all or that portion of any Administrative Expense which has been Allowed by a Final Order of the Bankruptcy Court.

1.05 "Allowed General Unsecured Claim" shall mean any Allowed Claim that is not an Allowed Administrative Expense, Allowed Fee Claim, Allowed Secured Claim, Allowed Priority Tax Claim, or Allowed Priority (Non-Tax) Claim.

1.06 "Allowed Priority Claim" shall mean any Allowed Claim or portion thereof entitled to priority under Bankruptcy Code §§507(a)(3) through (a)(6).

1.07 "Allowed Secured Claim" shall mean that portion of an Allowed Claim which is secured by a valid perfected lien on property of the Debtors, to the extent of the value of the interest of the holder of such Allowed Secured Claim in the property of the Debtors as determined by the Bankruptcy Court pursuant to Bankruptcy Code §506(a), together with interest, fees, costs and charges to the extent allowed by the Bankruptcy Court under Bankruptcy Code §506(b).

1.08 "Allowed Priority Tax Claim" shall mean any Allowed Claim or portion thereof entitled to priority under Bankruptcy Code §507(a)(8).

1.09 "Avoidance Actions" shall mean (a) any and all claims, suits and causes of action now held or hereafter acquired by the Debtors, the Estates, the Reorganized Debtors, or the Debtors' creditors under Bankruptcy Code §§544, 547, 548, 549, 550, or 553 and (b) any claim against any transferee of a transfer avoidable under Bankruptcy Code §549 received from the Debtors from and after the Petition Date, but prior to the Effective Date.

1.10 "Bankruptcy Code" shall mean title 11 of the United States Code, as amended.

1.11 "Bankruptcy Court" shall mean the United States Bankruptcy Court for the Southern District of New York, in which the Debtors' Chapter 11 Cases are pending, and the United States District Court for the Southern District of New York to the extent that in respect of the Chapter 11 Cases the District Court may have withdrawn reference, shall have determined to exercise original jurisdiction, or shall have sole authority to enter a final order or judgment.

1.12 "Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure.

1.13 "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday as defined in Bankruptcy Rule 9006(a).

1.14 "Casano" shall mean Frank Casano, one of the Debtors' prepetition secured lenders.

1.15 "Cash" shall mean cash and cash equivalents, and other readily marketable securities or instruments, including, but not limited to, bank deposits, checks and other similar items.

1.16 “Chapter 11 Cases” shall mean the Debtors’ jointly administered chapter 11 cases filed in the Bankruptcy Court, Case Nos. 15-12790 (JLG), 15-12791 (JLG), and 15-12792 (JLG), administered under Case No. 15-12790 (JLG).

1.17 “Claim” shall mean a claim against the Debtors, as defined in Bankruptcy Code §101(5).

1.18 “Claimant” shall mean the holder of a Claim.

1.19 “Class” shall mean any class into which Allowed Claims and Allowed Interests are classified pursuant to Article II of the Plan.

1.20 “Confirmation Date” shall mean the date the Confirmation Order is entered in the Chapter 11 Case.

1.21 “Confirmation Hearing” shall mean the hearing or hearings held by the Bankruptcy Court to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.22 “Confirmation Order” shall mean an Order of the Bankruptcy Court confirming the Plan in accordance with Bankruptcy Code §1129.

1.23 “Creditor” shall have the meaning set forth in Bankruptcy Code §101(10).

1.24 “Debtors” shall mean SG Blocks, Inc., SG Building Blocks, Inc., and Endaxi Infrastructure Group, Inc., as debtors and debtors in possession.

1.25 “DHIC” shall mean Dillon Hill Investment Company, LLC, one of the Debtors’ prepetition secured lenders.

1.26 “Dillon” shall mean Dillon Hill Capital, LLC, one of the Debtors’ prepetition secured lenders.

1.27 “DIP Financing Order” shall mean the Bankruptcy Court’s final order authorizing the Debtors to use Prepetition Lender’s cash collateral and to obtain debtor in possession financing from the DIP Lender (ECF Doc. No. 25).

1.28 “DIP Lender” shall mean Hillair Capital Investments L.P. in its capacity as debtor in possession lender to the Debtors pursuant to a Debtor in Possession Credit Agreement, Senior Security Agreement, and the DIP Financing Order.

1.29 “Disallowed Claim” shall mean any Claim or portion of a Claim which has been disallowed by a Final Order of the Bankruptcy Court.

1.30 “Disputed Claim” shall mean any Claim, proof of which was timely and properly filed, and (a) which is listed on the Schedules as unliquidated, disputed, or contingent, and which has not been resolved by written agreement between the Debtors and the Claimant or by an order of the Bankruptcy Court, (b) which is subject to a dispute to the extent that the Debtors or the Reorganized Debtors have asserted a claim against the holder of the Disputed Claim, or (c) as to which the Debtors have interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order. Prior to the filing of an objection to a Claim, or the expiration of the time within which to object to such Claim set forth in the Plan or otherwise established by order of the Bankruptcy Court, for purposes of the Plan, a Claim shall be considered a Disputed Claim if (x) the amount of the Claim specified in the proof of Claim exceeds the amount of the Claim scheduled by the Debtors as other than disputed, contingent or unliquidated, or (y) the Claim is not listed on the Schedules.

1.31 “Disputed Claims Reserve” shall mean the reserves to be established by the Debtors or the Reorganized Debtors on account of Disputed Administrative Expenses, Disputed Priority Claims, and Disputed Unsecured Claims to be used to make pro rata Distributions to holders of Disputed Administrative Expenses, Disputed Claims and Undetermined Claims in the event they become Allowed Claims.

1.32 “Distribute” or “Distribution” shall mean a payment by the Debtors or the Reorganized Debtors under the terms of the Plan.

1.33 “Distribution Date” shall mean any date, subsequent to the Effective Date, on which a Distribution under the Plan is to be made to the holders of Allowed Claims.

1.34 “Effective Date” shall mean the first day on which the Confirmation Order has become a Final Order and on which all of the conditions to the Effective Date in the Plan have been satisfied or waived.

1.35 “Effective Date Payment” shall mean the payment from the funds made available under the Exit Facility to pay the obligations to the DIP Lender, Administrative Expenses, any priority claims, and an initial fifty (50%) percent distribution to General Unsecured Creditors on Allowed General Unsecured Claims.

1.36 “Endaxi” shall mean Endaxi Infrastructure Group, Inc.

1.37 “Estates” shall mean the Debtors’ chapter 11 estates created on the Petition Date under Bankruptcy Code §541.

1.38 “Exit Facility” shall mean the senior secured convertible working capital facility in the approximate amount of $1.1 million provided to the Reorganized Debtor by Hillair to refinance the obligations to the DIP Lender, pay Administrative Expenses, provide an initial fifty (50%) percent distribution to General Unsecured Creditors and fund anticipated working capital needs. The Exit Facility shall be convertible into shares of the Debtor’s stock on the basis of 1.25 shares per $1.00 of convertible debt. The Exit Facility shall be subordinate to the specific liens granted to IPFS Corporation on account of insurance premium financing entered into by the Debtors.

1.39 “Fee Claims” shall mean claims by professionals retained by the Debtors during the Chapter 11 Cases for the payment of fees and the reimbursement of expenses incurred prior to the Effective Date.

1.40 “Final Order” shall mean: (i) an order or a judgment of the Bankruptcy Court; or (ii) a stipulation or other agreement entered into which is “so ordered” by the Bankruptcy Court, in either case the operation or effect of which has not been reversed, stayed, modified or amended and as to which (x) any appeal that has been taken has been finally determined or dismissed, or (y) the time to appeal or seek reconsideration has expired by reason of statute or otherwise and as to which no appeal or petition for review, *certiorari* or reconsideration has been taken or is pending (or if such appeal or petition has been granted, it has been finally decided), as a result of which such order, judgment, stipulation or agreement shall have become final in accordance with applicable law.

1.41 “General Unsecured Claim” means an Allowed Claim that is not an Administrative Expense, a Priority (Non-Tax) Claim, Priority Tax Claim, Fee Claim, or Secured Claim.

1.42 “Hillair” shall mean Hillair Capital Investments L.P., in its capacity as prepetition secured lender.

1.43 "Interest" shall mean any rights of a shareholder in respect of an equity interest in each of the Debtors.

1.44 "Lien" shall have the meaning set forth in Bankruptcy Code §101(37).

1.45 "Masterson" shall mean Scott Masterson, one of the Debtors' prepetition secured lenders.

1.46 "Nuccitelli" shall mean Marc Nuccitelli, one of the Debtors' prepetition secured lenders.

1.47 "Objections Bar Date" shall mean the deadline for the Debtors or the Reorganized Debtors to file objections to Claims, which deadline shall be the first Business Day that is ninety (90) days after the Effective Date of the Plan.

1.48 "Person" shall have the meaning set forth in Bankruptcy Code §101(41).

1.49 "Petition Date" shall mean October 15, 2015.

1.50 "Prepetition Lender" shall collectively mean Hillair, Dillon, DHIC, Casano, Masterson, and Nuccitelli, in their role as prepetition secured lender to the Debtors.

1.51 "Prepetition Lender's Lien" shall mean the lien granted to the Prepetition Lender on account of the Prepetition Lender Secured Claim contained in the relevant loan documents evidencing the Prepetition Lender Secured Claim, and in the DIP Financing Order.

1.52 "Prepetition Lender Secured Claim" shall mean the Allowed Secured Claim of Prepetition Lender, which is secured by a valid first-priority lien on substantially all of the Debtors' assets.

1.53 "Plan" shall mean this Plan of Reorganization, as it may be amended or modified.

1.54 "Priority (Non-Tax) Claims" shall mean any Claim that is entitled to priority status in accordance with Bankruptcy Code §507(a), other than Priority Tax Claims and Administrative Expenses.

1.55 "Priority Tax Claims" shall mean any Claim for taxes entitled to priority status in accordance with Bankruptcy Code §§502(i) or 507(a)(8), but specifically excludes any penalty assessed with respect to such taxes.

1.56 "Pro Rata Share" shall mean the proportion that the Allowed Claim bears to the sum of all Allowed Claims, Disputed Claims and Undetermined Claims of that particular Class or in the case of Interests the proportion of Interests held by such holder in relation to the sum of al outstanding Interests.

1.57 "Released Parties" shall have the meaning set forth in Article X of the Plan.

1.58 "Released Claims" shall mean the claims released under Article X of the Plan.

1.59 "Reorganized Debtors" shall mean the Debtors after the Effective Date.

1.60 "Schedules" shall mean the schedules of assets and liabilities, lists and statement of financial affairs and executory contracts filed by the Debtors with the Bankruptcy Court, as they may be amended pursuant to the Bankruptcy Rules.

1.61 "Securities Act" shall mean the Securities Act of 1933, as amended.

1.62 "Unclaimed Property" shall mean any Cash (together with any interest earned thereon) unclaimed on the later of the 180th day following the Effective Date or the last Distribution Date. Unclaimed Property shall include checks (and the funds represented thereby): (i) which have been returned as undeliverable without proper forwarding addresses; (ii) which have not been paid; or (iii) which were not mailed or delivered because of the absence of a proper address for the Claimant.

1.63 "Undetermined Claim" shall mean any Claim that is (i) a Disputed Claim or (ii) an unliquidated or contingent Claim.

1.64 "Unsecured Creditor" shall mean the holder of an Unsecured Claim.

1.65 "U.S. Trustee" shall mean the United States Trustee for Region 2.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

2.01 General Rules of Classification. A Claim or Interest is classified in a particular Class for voting and distribution purposes only to the extent the Claim or Interest qualifies within the description of that Class, and is classified in other Classes to the extent the Claim or Interest qualifies within the description of such Classes.

2.02 Administrative Expenses and Priority Tax Claims. Administrative Expenses and Priority Tax Claims have not been classified and are excluded from the Classes of Claims in accordance with Bankruptcy Code §1123(a)(1).

2.03 Satisfaction of Claims and Interests. The treatment to be provided for Allowed Claims and Interests under this Plan and the consideration provided under this Plan shall be in full satisfaction, settlement, release and discharge of all Claims and Interests against the Debtors and their property.

2.04 Bar Dates for Claims. Pursuant to the Bankruptcy Court's Order, dated December 18, 2015 (ECF Doc. No. 33), all non-governmental unit Claims against the Debtors, including claims under Bankruptcy Code §503(b)(9) must be filed on or before January 25, 2016, and all Claims of governmental units must be filed on or before April 12, 2016. Claims arising from the rejection of executory contracts and unexpired leases shall be governed by the specific orders of the Bankruptcy Court regarding the assumption or rejection of executory contracts and unexpired leases and Article VI of the Plan.

2.05 Bar Date for Fee Claims. The Confirmation Order, or the order scheduling the Confirmation Hearing, shall provide a deadline for the filing of requests for payment of Fee Claims incurred prior to the Confirmation Date. Any Person that fails to file an application for the payment of professional fees and expenses on or before the time and date established in the Confirmation Order or the order scheduling the Confirmation Hearing shall be forever barred from seeking payment or reimbursement from the Debtors, their Estates or the Reorganized Debtors. Counsel for the DIP Lender shall not be required to file an application for payment of its legal fees and expenses, other than in accordance with paragraph 14 of the DIP Financing Order.

2.06 Acceptance of Classification. Any holder of a Claim or Interest who fails to object in writing to the classification of Claims and Interests provided in the Plan, and who has not filed an objection with the Bankruptcy Court and served the objection upon counsel to the Debtors, counsel to Prepetition Lender and the U.S. Trustee at least ten (10) days prior to the Confirmation Hearing shall be deemed to have accepted the classification set forth in the Plan.

2.07 Classification. For purposes of the Plan, all Allowed Claims shall be placed in the following Classes:

- Class 1 (Allowed Priority (Non-Tax) Claims)
- Class 2 (Allowed DIP Lender Secured Claim)
- Class 3 (Allowed Prepetition Lender Secured Claim)
- Class 4 (General Unsecured Claims)
- Class 5 (Interests in the Debtors)

ARTICLE III

TREATMENT OF CLASSES

3.01 Administrative Expenses. Administrative Expenses are not impaired. Except with respect to Administrative Expenses Allowed under Bankruptcy Code §503(b)(9), which shall be paid as soon as reasonably practicable after the Effective Date or upon such other terms as may be agreed to by the holder thereof and the Debtors, Allowed Administrative Expenses, including Fee Claims, shall be paid by the Debtors or the Reorganized Debtors on the later to occur of (a) the Effective Date, and (b) the date such Claim becomes Allowed by a Final Order of the Bankruptcy Court, or as soon as practicable thereafter, or upon such other terms as may be agreed to by the holder thereof and the Debtors. In the event of any subsequent conversion of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, all payments on account of any Allowed Administrative Expenses shall be deemed to have been made in the ordinary course of the Debtors' business and shall not be deemed to be avoidable transfers under Bankruptcy Code §549.

3.02 U.S. Trustee Fees. Statutory fees, and any applicable interest thereon, are all fees payable pursuant to Chapter 123 of Title 28, United States Code, including, but not limited to, all fees required to be paid by 28 U.S.C. §1930(a)(6) plus any interest due and payable under 31 U.S.C. §3717 **("U.S. Trustee Fees").** U.S. Trustee Fees will accrue and be timely paid until the Case is closed, dismissed, or converted to another chapter under the Bankruptcy Code. Any U.S. Trustee Fees owed on or before the Effective Date of this Plan will be paid in full on the Effective Date of the Plan.

3.03 Priority Tax Claims. Priority Tax Claims are not impaired. All Allowed Priority Tax Claims shall be paid on the Effective Date unless such claims are Allowed in an amount significantly greater than estimated or in an amount that would jeopardize a recovery to unsecured creditors, then in that case Priority Tax Claims will be paid over a five (5) year period in accordance with Bankruptcy Code §1129(a), at the Federal Judgment Rate. Holders of Priority Tax Claims shall not be entitled to vote on the Plan.

3.04 Class 1 Priority (Non-Tax) Claims. Allowed Priority (Non-Tax) Claims shall be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable. The Debtors do not believe any such claim exists. In accordance with Bankruptcy Code § 1126(f), holders of Class 1 Claims shall not be entitled to vote on the Plan and shall be deemed to have accepted the Plan. Class 1 Claims are not impaired.

3.05 Class 2 DIP Lender Secured Claim shall be paid in full on the Effective Date from the Effective Date Payment.

3.06 Class 3 Prepetition Lender Secured Claim. Holders of the Allowed Prepetition Lender Secured Claim, shall receive one hundred (100%) percent of a newly issued convertible preferred stock on the basis of one share of preferred stock per dollar of Allowed Petition Lender Secured Claim. The preferred stock shall vote with the common stock of the Reorganized Debtor on an as converted basis, shall receive dividends with the common stock, and shall have a $1.00 per share liquidation preference. The preferred stock is convertible into common stock on a 1:1 basis and, if converted on the Effective Date, would convert into 82.5% of the common stock of the Reorganized Debtor, after taking into account common stock issued to holders of Class 5 Interests and the Management Options (defined below), but before any conversion of the Exit Facility. On the Effective Date, the Reorganized Debtor's management will receive options (the "Management Options") to acquire 10% the Reorganized Debtor's new common stock, calculated on a fully diluted basis assuming conversion of all of the preferred stock but not the Exit Facility. The Management Options will be subject to certain vesting conditions. The holder of the Exit Facility also retains conversion rights that will dilute the ownership rights of holders of Class 3 Claims and Class 5 Interests. Hillair shall be entitled to designate three members of the Reorganized Debtors' Board of Directors. Dillon, DHIC, Casano, Masterson and Nuccitelli will be granted Board of Directors observation rights by the Reorganized Debtor, subject to certain share ownership requirements to be determined by the Reorganized Debtor. All shares of new common or preferred stock issued under the Plan will be issued without registration under the Securities Act or any similar federal, state, or local law in reliance upon either section 1145 of the Bankruptcy Code or Section 4(a)(2) of the Securities Act, as amended. The Class 3 Prepetition Lender Secured Claim is impaired.

3.07 Class 4 General Unsecured Claims. Class 4 Claims are comprised of the Allowed Claims of General Unsecured Creditors. Each holder of an Allowed General Unsecured Claim shall receive a Distribution of one hundred (100%) percent of its Allowed Claim, plus post-petition interest calculated at the Federal judgment rate, payable as follows: fifty (50%) percent of its Allowed Claim on the Effective Date as part of the Effective Date Payment, twenty five (25%) percent at the conclusion of the next full fiscal quarter of the Reorganized Debtor after the Effective Date, and the remaining twenty five (25%) percent of its Allowed Claim, plus any post-petition interest owed, at the conclusion of the next full fiscal quarter of the Reorganized Debtor after the Effective Date, and the remaining twenty five (25%) percent of its Allowed Claim at the conclusion of the second full fiscal quarter of the Reorganized Debtor after the Effective Date. Class 4 Claims are impaired.

3.08 Class 5 Interests. Shares of stock held by each holder of Interests in the Debtors shall be cancelled and replaced by such holder's pro rata share of 100% of the new common stock in the Reorganized Debtors that is outstanding at the Effective Date. Such common stock ownership in the Reorganized Debtor is subject to dilution by conversion of the preferred stock as described in Section 3.06. Assuming 100% of such preferred stock is converted and taking into account the Management Options as if fully exercised, the holders of the Class 5 Interests would hold 7.5% of the common stock of the Reorganized Debtor. The ownership interest of the holders of the Class 5 Interests is subject to further dilution upon the conversion of the Exit Facility into new common stock. Class 5 Interests are impaired.

ARTICLE IV

CLAIMS AND INTERESTS IMPAIRED UNDER THE PLAN

4.01 Claims and Interests in Classes 3, 4 and 5 are impaired under the Plan, and are entitled to vote on the Plan. Claims in Classes 1 and 2 are not impaired under the Plan, and are not entitled to vote on the Plan.

4.02 Pursuant to Bankruptcy Code §1126(c), a Class of Claims shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the holders of Allowed Claims in such Class that vote on the Plan. Pursuant to Bankruptcy Code §1126(d), holders of Interest in Class 5 shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in amount of the Allowed Interests of such Class 5.

4.03 Classes 3, 4 and 5 are currently entitled to vote to accept or reject the Plan. To the extent that any Class entitled to vote rejects the Plan, the Debtors intend to seek confirmation of the Plan in accordance with Bankruptcy Code §1129(b).

4.04 The Plan shall serve as a motion by the Debtors seeking entry of an order substantively consolidating each of the Estates of the Debtors into a single consolidated Estate solely for the limited purposes of voting, confirmation, and distribution. For the avoidance of doubt, the Plan shall not serve as a motion by the Debtors seeking entry of an order substantively consolidating the Debtors for any other purposes. **Moreover, any alleged defaults under any applicable agreement with the Debtors, the Reorganized Debtors, or their respective affiliates arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date.**

ARTICLE V

MEANS FOR IMPLEMENTATION OF THE PLAN

5.01 Payments on the Effective Date. No later than two (2) Business Days before the Confirmation Hearing, the Debtors shall provide proof that they will have sufficient funds to make the Effective Date Payment required under the Plan.

The payments under the Plan will be made from (a) Effective Date Payment, and (b) the Cash derived from the Debtors' operations and/or the Reorganized Debtor's operations.

Except for Allowed Administrative Expenses held pursuant to Bankruptcy Code §503(b)(9), which shall be paid as soon as reasonably practicable after the Effective Date or upon such other terms as may be agreed to by the holder thereof and the Debtors, on the Effective Date the Debtors shall have the Cash necessary to pay in full Allowed Administrative Expenses, including Allowed Fee Claims (except to the extent that the holders of Administrative Expense or Fee Claims agree to different treatment), except as otherwise provided in the Plan, Allowed Priority (Tax) Claims and Priority (Non-Tax) Claims.

5.02 Payments after the Effective Date. To the extent necessary to pay Allowed Claims under the Plan, the Reorganized Debtor will pay the remaining fifty (50%) percent of the Allowed Class 4 Claims from their cash flow in accordance with the Plan.

5.03 Release of Avoidance Actions. On the Effective Date, the Debtors, on behalf of themselves and their Estates shall release any and all Avoidance Actions and the Debtors and the Reorganized Debtors, and any of their successors and assigns and any entity acting on behalf of the Debtors or the Reorganized Debtors shall be deemed to have waived the right to pursue any and all Avoidance Actions.

5.04 Reserves. On the Effective Date, or as soon thereafter as is reasonably practical, the Debtors shall establish and maintain adequate reserves for Disputed Claims.

On the later to occur of (a) the Effective Date, and (b) the date such Claim becomes Allowed by a Final Order of the Bankruptcy Court, or as soon thereafter is reasonably practicable, the Debtors shall use available Cash to pay in full, or establish appropriate reserves for Allowed Administrative Expenses, including Allowed Fee Claims, except as otherwise agreed to by the holder thereof and the Debtors. The Debtors shall pay all Priority Tax Claims, and Priority (Non-Tax) Claims, in accordance with Article III of the Plan.

5.05 Investments by the Debtors. All Cash held by the Debtors, whether held in investment accounts, bank accounts, any Disputed Claims Reserve, or any escrow accounts, shall be invested in accordance with Bankruptcy Code §345 in a financial institution that is an authorized depository under the U.S. Trustee Operating Guidelines.

5.06 Delivery of Distributions. Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the holders of Allowed Claims shall be made at (a) the address of each holder as set forth in the Schedules, unless superseded by the address set forth on proofs of Claim filed by such holder, or (b) the last known address of such holder if no proof of Claim is filed or if the Debtors have been notified in writing of a change of address.

5.07 Undeliverable Distributions and Unclaimed Property. If any distribution made by the Debtors or the Reorganized Debtor, as applicable, is returned as undeliverable, the Debtors or the Reorganized Debtors, as applicable, may, in their sole discretion, make such efforts to determine the current address of the Holder of the Claim with respect to which the distribution was made, but no distributions to any Holder of an Allowed Claim will be made until the Debtors or the Reorganized Debtors, as applicable, have determined the current address of the Holder of such Allowed Claim, at which time the distribution will be made without interest. The Debtors or the Reorganized Debtors, as applicable, shall have sole discretion to determine how to make distributions in the most efficient and cost-effective manner. Amounts in respect of any undeliverable distributions made by the Debtors or the Reorganized Debtor, as applicable, shall be returned to, and held in trust by, the Debtors or the Reorganized Debtor, as applicable, until the distributions are claimed, or are deemed to be Unclaimed Property upon the expiration of six (6) months from the date of the return of the undeliverable distribution. Unclaimed Property shall revert to the Reorganized Debtors in accordance with the provisions of the Plan.

5.08 Record Date for Distributions. Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the date of the entry of the Confirmation Order will be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the date of the entry of the Confirmation Order. The Debtors and Reorganized Debtors shall have no obligation to recognize any transfer of any Claim occurring after the date of the entry of the Confirmation Order. In making any Distribution with respect to any Claim, the Debtors shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Person that is listed on the proof of Claim filed with respect thereto, or on the Schedules, as the holder thereof as of the close of business on the date of the entry of the Confirmation Order, and upon such other evidence or record of transfer or assignment that are known to the Debtors as of the date of the entry of the Confirmation Order.

5.09 Distributions to Holders of Claims — Generally.

(a) Distributions on Account of Allowed Claims Only. Except as otherwise provided in this Plan, Disputed Claims shall not be entitled to any Distribution until such Disputed Claim becomes an Allowed Claim. All Claims of any Person from which property is sought by the Debtors, or the Reorganized Debtors, as applicable, under Bankruptcy Codes §§ 542, 543, 550, or 553, or that the Debtors, or the Reorganized Debtors, allege is a transferee of a transfer that is avoidable under Bankruptcy Code §§ 544, 545, 547, 548, 549, or 553 shall be disallowed if such Person or transferee has failed to turnover such property to the Reorganized Debtors.

(b) Method of Cash Distributions. Any payment of Cash to be made pursuant to the Plan will be in U.S. dollars and may be made by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

(c) Distributions on Non-Business Days. Any payment or Distribution due on a day other than a Business Day may be made, without interest, on the next Business Day.

(d) No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution (of a value set forth herein or in the Disclosure Statement) in excess of the Allowed amount of such Claim.

(e) Interest on Claims. Except as specifically provided for in the Plan or the Confirmation Order, interest shall not accrue on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim, other than the Claim of the DIP Lender in accordance with the DIP Financing Order. Interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Petition Date to the date a final Distribution is made thereon if and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided herein or in a Final Order of the Bankruptcy Court, no prepetition Claim shall be allowed to the extent that it is for postpetition interest or other similar charges.

(f) Disputed Payments. If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Reorganized Debtors may, in lieu of making such Distribution to such Person, make such Distribution into an escrow account or hold such Distribution in reserve until the disposition thereof shall be determined by Bankruptcy Court order, or by written agreement among the interested parties to such dispute.

(g) Withholding Taxes. Any federal or state withholding taxes or other amounts required to be withheld under any applicable law may be deducted and withheld from any Distributions under the Plan. All Persons holding Claims shall be required to provide any information necessary to effect the withholding of such taxes. The Reorganized Debtors may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Reorganized Debtors to the appropriate authority. If the holder of an Allowed Claim fails to provide the information necessary to comply with any withholding requirements of any governmental unit within ninety (90) days after the date of first notification to the holder of the need for such information, or for the Cash necessary to comply with any applicable withholding requirements, then such holder's Distribution shall be treated as Unclaimed Property herein or the amount required to be withheld may be so withheld and turned over to the applicable authority.

(h) Time Bar to Cash Payments by Check. Checks issued by the Reorganized Debtors on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to this Section may be made directly to the Reorganized Debtors by the holder of the Allowed Claim to whom the check was originally issued. Any Claim with respect to such voided check must be made in writing, on or before the later of the first anniversary of the Effective Date, or the six (6) month anniversary of the date on which the Distribution was made. After that date, all Claims with respect to voided checks shall be discharged and forever barred and the proceeds of those checks shall be deemed Unclaimed Property in accordance with Bankruptcy Code §347(b) and be distributed as provided herein.

(i) No Payments of Fractional Dollars. Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole dollar.

(j) No Payment of Fractional Shares. Notwithstanding any other provision of the Plan to the contrary, no payment of fractional shares of stock shall be made pursuant to the Plan. Whenever any payment of a fraction of a share of stock under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole share.

(k) Minimum Distributions. Notwithstanding anything herein to the contrary, the Reorganized Debtors shall not be required to make distributions or payments of less than $25.00, and shall not be required to make partial distributions or payments of fractions of dollars. Any Holder of an Allowed Claim whose aggregate distribution under this Plan is less than $25.00 shall forfeit, at the option of the Reorganized Debtors, such amount to, and such amount shall vest in, the Debtors for distribution in accordance with the terms of the Plan.

(l) Setoff and Recoupment. The Reorganized Debtors may, but shall not be required to, setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature that the Reorganized Debtors or the Estates may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Estates, or the Reorganized Debtors, of any right of setoff, recoupment claims, rights or Avoidance Actions that the Debtors, the Estates, or the Reorganized Debtors, or any of their successors may possess against such holder. Any setoff or recoupment shall only be made after the affected creditor is provided not less than five days notice.

5.10 Quarterly Reports. Until the Chapter 11 Cases are closed, the Reorganized Debtors shall file quarterly reports setting forth (a) the status of Distributions to holders of Allowed Class 4 Claims, and (b) the status of any Avoidance Actions. The quarterly reports shall be filed on or before the 15th day of July, October, January and April. In addition, the Reorganized Debtors shall maintain an accurate register of the General Unsecured Claims.

5.11 Vesting of Assets. As of the Effective Date, pursuant to provisions of Bankruptcy Code §§ 1141(b) and (c), all property and assets of the Debtors shall be transferred to and shall vest in the Reorganized Debtors free and clear of all Liens, Claims and Interests, except as otherwise expressly provided in this Plan, and the Confirmation Order.

5.12 Continuing Existence. From and after the Effective Date, the Reorganized Debtors will continue in existence and shall continue normal operations of their business as corporations under applicable law.

ARTICLE VI

EXECUTORY CONTRACTS AND LEASES

6.01 Any executory contract or unexpired lease of the Debtors which has not been assumed or rejected by Final Order of the Bankruptcy Court, or which is not the subject of a pending motion to assume or reject on the Confirmation Date, shall be deemed assumed by the Debtors on the Effective Date. Simultaneously with service of the Plan and Disclosure Statement, the Debtors shall provide a notice to all counter-parties to executory contracts proposed to be assumed, substantially in the former annexed hereto as **Exhibit 1.** Such counter-parties shall have until seven (7) days prior to the Confirmation Hearing to file an objection to the proposed cure amount provided in such notice. All objections to cure amounts shall be heard at the Confirmation Hearing. To the extent that the D&O Liability Insurance Policies are considered to be Executory Contracts, notwithstanding anything in the Plan to the contrary, effective as of the Effective Date, the Reorganized Debtors shall be deemed to have assumed all unexpired D&O Liability Insurance Policies with respect to the Debtors' directors, managers, officers, and employees serving on or prior to the Petition Date pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtors' assumption of each of the unexpired D&O Liability Insurance Policies. On the Effective Date, the Debtors shall be deemed to have assumed all of the Debtors insurance policies.

6.02 Any entity with a Claim that arises from the rejection of an executory contract or unexpired lease must file its Claim within thirty (30) days after the later of the date of the order rejecting the executory contract or unexpired lease and the Confirmation Date, and shall have the same rights as a Class 4 Claimant to the extent such Claim becomes an Allowed General Unsecured Claim. **Any Claims arising from the rejection of an executory contract or unexpired lease not filed with the Bankruptcy Court within such time will be automatically treated as a Disallowed Claim, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Reorganized Debtors, the Estates, or property of the foregoing parties, without the need for any objections by the Debtors or the Reorganized Debtors, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other entity, and any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or any proof of Claim to the contrary.**

ARTICLE VII

PROCEDURE FOR RESOLVING DISPUTED CLAIMS

7.01 Disputed Claim Reserves. Except as provided for below, the Debtors shall set aside and reserve for the benefit of each holder of a Disputed Claim an amount equal to the Distributions to which the holder of such Disputed Claim would be entitled if such Disputed Claim were an Allowed Claim, in an amount equal to the amount of such Claim as estimated by the Bankruptcy Court pursuant to an order. Such reserved amounts, and the difference between the amount so reserved for each such Claim and the amount of federal, state and local taxes paid by the Debtors with respect to such Claim shall constitute the maximum Distribution amount to which the holder of such Claim may ultimately become entitled to receive.

7.02 Distributions to Holders of Allowed Claims. After the Effective Date, the Reorganized Debtors shall make one or more Distributions to holders of Allowed Claims in accordance with the Plan.

(i) Distributions on Disputed Claims. No Distributions shall be made with respect to a Disputed Claim until the resolution of such dispute by agreement with the Debtors, the Reorganized Debtors, or Final Order. On or as soon as reasonably practicable after the first Business Day of the next calendar quarter after a Disputed Claim becomes an Allowed Claim, the Debtors shall distribute to the holder thereof Cash, from the Disputed Claims Reserve, in an amount equal to the aggregate amount of Cash that would have been distributed to such holder in respect of such Claim had such Claim been an Allowed Claim, in the amount in which it is ultimately allowed.

(ii) Treatment of Excess Cash in Disputed Claims Reserve. To the extent a Disputed Claim becomes a Disallowed Claim or is reclassified, any Cash previously reserved for such portion of such Disputed Claim shall be distributed in accordance with the Plan. To the extent all payments required under the Plan have already been made, Cash previously reserved for Disputed Claims shall be paid to the Reorganized Debtor in accordance with Section 5.11 of the Plan.

7.03 Resolution of Disputed Claims. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, after the Confirmation Date the Reorganized Debtors shall have the right to make and file objections to all Claims, and shall serve a copy of each objection upon the holder of the Claim to which the objection is made, as soon as practicable, but in no event later than the Objections Bar Date. From and after the Confirmation Date, all objections shall be litigated to a Final Order except to the extent the Reorganized Debtors elect to withdraw any claim objection, or the Reorganized Debtors and the claimant elect to compromise, settle or otherwise resolve any claim objection, in which event they may settle, compromise or otherwise resolve any Disputed Claim without further approval of the Bankruptcy Court. A Disputed Claim as to which no objection is filed by the Objections Bar Date shall become an Allowed Claim.

7.04 Procedure for Omnibus Objections to Claims. The Debtors and the Reorganized Debtors are permitted to file omnibus objections to claims (an **"Omnibus Objection")** on any grounds, including but not limited to those grounds specified in Bankruptcy Rule 3007(d). For claims that have been transferred, a notice shall be provided only to the person or persons listed as being the owner of such claim on the Debtors' claims register as of the record date as provided for in Article V of the Plan. The notice of an Omnibus Objection shall include a copy of the relevant Omnibus Objection but not the exhibits thereto listing all claims subject to the objection thereby; rather, the notice shall (i) identify the particular claim or claims filed by the claimant that are the subject of the Omnibus Objection, (ii) provide a unique, specified and detailed basis for the objection, (iii) explain the proposed treatment of the claim, (iv) notify such claimant of the steps that must be taken to contest the objection, and (v) otherwise comply with the Bankruptcy Rules.

7.05 Maintenance of Disputed Claims Reserve. To the extent that the property placed in a Disputed Claims Reserve consists of Cash, that Cash shall be deposited in an interest-bearing account in a financial institution that is an authorized depository under the U.S. Trustee Operating Guidelines. The Disputed Claims Reserve shall be closed and extinguished by the Reorganized Debtors when all Distributions and other dispositions of Cash or other property required to be made under the Plan from such reserves will have been made in accordance with the terms of the Plan.

ARTICLE VIII

RETENTION OF JURISDICTION

8.01 The Bankruptcy Court shall retain jurisdiction over the Debtors, the Reorganized Debtors, and the Chapter 11 Cases pursuant to chapter 11 of the Bankruptcy Code and for the purposes set forth in Bankruptcy Code §1127(b), including, without limitation, with respect to the following matters:

(a) to enable the Debtors or the Reorganized Debtors, as applicable, to prosecute any Avoidance Actions;

(b) to hear and determine any claim or cause of action belonging to the Estates, and any disputes concerning the classification, allowance, or estimation of any Claim;

(c) to resolve any disputes concerning any funds held in the Disputed Claims Reserve;

(d) to hear and determine all disputed issues relating to a security or ownership interest in any property of the Estates, or in any proceeds thereof;

(e) to hear and determine all Claims arising out of any agreement entered into by the Debtors after the Petition Date but prior to the entry of the Confirmation Order;

(f) to recover all assets and property of the Debtors wherever located;

(g) to alter, modify and amend the Plan pursuant to Bankruptcy Code §1127 or to remedy any defect, cure any omissions, or reconcile any inconsistency in the Plan or Confirmation Order as may be necessary to carry out the purpose and intent of the Plan, and to extent authorized by the Bankruptcy Code or Bankruptcy Rules;

(h) to hear and determine such other matters as may be provided for in the Confirmation Order and for the purposes set forth in Bankruptcy Code §§1127(b) and 1142, or in Bankruptcy Rules 1019 and 3020(d);

(i) to hear and determine all applications for compensation of professionals for services rendered and expenses incurred through the Confirmation Date, and thereafter to hear and determine any objections to compensation of professionals;

(j) to hear and determine any and all pending applications, adversary proceedings, contested matters and litigated matters;

(k) to hear and determine any disputed issues with respect to the payments to be made under the Plan;

(l) to enter orders that are necessary or appropriate to carry out the provisions of the Plan, including orders interpreting the provisions of the Plan;

(m) to enter a Final Order or decree concluding the Debtors' Chapter 11 Cases; and

(n) to determine such other matters as may be provided for in the Confirmation Order, or as may be authorized under the provisions of the Bankruptcy Code.

ARTICLE IX

CONFIRMATION AND EFFECTIVE DATE

9.01 Conditions Precedent to Confirmation. The following are the conditions precedent to the Confirmation of the Plan:

(a) The Debtors shall have entered into the Exit Facility, conditioned on the entry of the Confirmation Order, which shall provide Cash sufficient to make the Effective Date Payment;

(b) All terms, conditions and provisions of the Plan are approved in the proposed Confirmation Order;

(c) The proposed Confirmation Order shall be in form and substance acceptable to counsel to the Debtors, counsel to DIP Lender, counsel to the Exit Facility lender, and the U.S. Trustee;

(d) The Debtors shall have sufficient Cash to pay in full all Allowed Administrative Expenses, including Fee Claims; and

(e) The terms of the Confirmation Order authorize the Reorganized Debtors to issue the new common stock and new preferred stock pursuant to the exemption from registration under the Securities Act provided by either section 1145 of the Bankruptcy Code or Section 4(a)(2) of the Securities Act, as amended.

The conditions precedent set forth in subparagraphs (a), (b), (c) (d) and (e) above, may be waived by the Debtors, only upon reasonable notice to counsel to DIP Lender, counsel to the Committee, and the U.S. Trustee.

9.02 Conditions Precedent to the Effective Date. The following are the conditions precedent to the Effective Date of the Plan:

(a) The Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall have become a Final Order; and

(b) The Debtors shall have made the Effective Date Payment.

ARTICLE X

DISCHARGE OF CLAIMS, RELEASES AND EXCULPATION

10.01 Interest Holders of the Debtors shall be treated as provided in section 3.08 of this plan.

10.02 Injunction. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, FROM AND AFTER THE CONFIRMATION DATE, ALL PERSONS ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR PROCEEDING (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE DEBTORS' PROPERTY, OR THE ESTATES BASED ON ANY ACT, OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED ON OR BEFORE THE CONFIRMATION DATE, INCLUDING ANY CLAIMS THAT ARE PROPERTY OF THE DEBTORS' BANKRUPTCY ESTATES (COLLECTIVELY, THE "RELEASED CLAIMS"); PROVIDED THAT NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL ENJOIN THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE OR LOCAL AUTHORITY, FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER PROCEEDINGS (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTORS, OR ANY OF THE DEBTORS' OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS, OR THE DEBTORS' PROPERTY, FOR ANY LIABILITY, INCLUDING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES, OR ANY STATE OR LOCAL AUTHORITY. IN ADDITION, THE INJUNCTION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

10.03 Release by the Debtors. PURSUANT TO BANKRUPTCY CODE §1123(b), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, UPON THE EFFECTIVE DATE, THE DEBTORS AND REORGANIZED DEBTORS SHALL RELEASE UNCONDITIONALLY, AND HEREBY ARE DEEMED TO FOREVER RELEASE UNCONDITIONALLY THE FOLLOWING PERSONS (COLLECTIVELY, THE "RELEASED PARTIES "): (A) THE DIP LENDER AND PREPETITION LENDER AND THEIR DIRECTORS, OFFICERS, ADVISORS, ACCOUNTANTS, CONSULTANTS, AND ATTORNEYS; AND (B) THE DEBTORS' ADVISORS, INCLUDING ATTORNEYS AND ACCOUNTANTS, FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, INCLUDING THE RELEASED CLAIMS (EXCEPT FOR THE RIGHT TO ENFORCE THE PERFORMANCE OF THEIR RESPECTIVE OBLIGATIONS, IF ANY, UNDER THE PLAN AND THE RIGHT TO FILE AN OBJECTION WITH THE BANKRUPTCY COURT WITH RESPECT TO ANY FEE CLAIMS), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE, EXCEPT FOR THOSE CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES. IN ADDITION, THE RELEASE PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

10.04 Exculpation. TO THE EXTENT PERMISSIBLE UNDER BANKRUPTCY CODE §1125(e), NEITHER THE RELEASED PARTIES NOR THEIR ADVISORS, ACCOUNTANTS, AND ATTORNEYS, SHALL HAVE OR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION DURING THE PENDENCY OF THE CHAPTER 11 CASES IN CONNECTION WITH, OR ARISING OUT OF, THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, OR THE PROPERTY OR CASH TO BE DISTRIBUTED UNDER THE PLAN; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION SHALL HAVE NO EFFECT ON THE LIABILITY OF AN ENTITY WHICH RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE RESULTED FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES, AND, IN ALL RESPECTS, THE RELEASED PARTIES SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. IN ADDITION, THE EXCULPATION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

NOTHING CONTAINED HEREIN SHALL CONSTITUTE A RELEASE OF AN INDEPENDENT CLAIM HELD BY A CREDITOR OR INTEREST HOLDER AGAINST A NON-DEBTOR ENTITY OR PERSON BASED ON ACTS OR OMISSIONS UNRELATED TO THE DEBTORS OR THE CHAPTER 11 CASES. IN ADDITION, NOTHING CONTAINED HEREIN OR IN THE PLAN SHALL RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES AND SETTLEMENTS CONTAINED IN THE PLAN.

NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, ANY CLAIM ARISING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST: (I) THE DEBTORS; (II) ANY OF THE DEBTORS' SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS; AND (III) THE RELEASED PARTIES. IN ADDITION, SUBJECT TO BANKRUPTCY CODE §§ 524 AND 1141, THE RELEASES DESCRIBED HEREIN SHALL NOT PRECLUDE POLICE, FEDERAL TAX, OR REGULATORY AGENCIES FROM FULFILLING THEIR STATUTORY DUTIES.

THE RELEASES DESCRIBED IN THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER RELEASE SEPARATELY GIVEN, CONDITIONALLY OR UNCONDITIONALLY, BY THE DEBTORS TO ANY OTHER PERSON. ANY RELEASE GIVEN BY THE DEBTORS OR A PERSON WHICH IS PART OF OR SUBJECT TO A FINAL ORDER OF THE BANKRUPTCY COURT REMAINS IN FULL FORCE AND EFFECT AND ARE RATIFIED BY THE PLAN.

10.05 Persons or Entities Not Released by the Debtors. Except for the releases contained in the Plan, the Confirmation Order and the DIP Financing Order, the Debtors and the Estates are not releasing any claims or actions against any Person, or their respective affiliates, assigns, agents, directors, officers, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing.

10.06 Good Faith. The entry of the Confirmation Order shall constitute the determination by the Bankruptcy Court that the Released Parties have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code, pursuant to, among others, Bankruptcy Code §§1125(e) and 1129(a)(3), with respect to the foregoing.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.01 Headings. The headings used in the Plan are inserted for convenience or reference only and are not part of the Plan.

11.02 Notices. Notices shall be deemed given when received. All notices, requests or demands described in or required to be made in accordance with the Plan shall be in writing and shall be delivered by overnight mail and email transmission as follows:

(a) If to the Debtors or Reorganized Debtors:
SilvermanAcampora LLP
100 Jericho Quadrangle - Suite 300
Jericho, New York 11753
Attn: Gerard R. Luckman
(516) 479-6300
GLuckman@SilvermanAcampora.com

(b) If to the DIP Lender:
McDonald Hopkins LLC
600 Superior Avenue East
Suite 2100
Cleveland, OH 44114
Attn: Scott N. Opincar
(216) 348-5753
sopincar@mcdonaldhopkins.com

(c) If to the Prepetition Lender:
McDonald Hopkins LLC
600 Superior Avenue East
Suite 2100
Cleveland, OH 44114
Attn: Scott N. Opincar
(216) 348-5753
sopincar@mcdonaldhopkins.com

(d) If to the U.S. Trustee:
Office of the U.S. Trustee
201 Varick Street, Suite 1006
New York, New York 10014
Attn: Andrea B. Schwartz
(212) 510-0500
Andrea.B.Schwartz@USDOJ.gov

If to a holder of a Claim or Interest, at the address set forth in its proof of Claim or proof of Interest filed with and allowed by the Court, or, if none, at its address set forth in the Schedules prepared and filed by the Debtors with the Bankruptcy Court pursuant to Bankruptcy Rule 1007(b).

11.03 Change of Address. Any of the parties identified in section 11.02 of the Plan may change the address at which it is to receive notices under the Plan by sending written notice pursuant to the provisions of this Article to counsel to the Debtors.

11.04 Modification of the Plan. The Debtors reserve the right, in accordance with the Bankruptcy Code, upon reasonable notice to and written consent of counsel to DIP Lender and, upon reasonable notice to the Prepetition Lender, to amend or modify the Plan prior to the Confirmation Date or as soon as practicable thereafter. After the Confirmation Date, the Debtors or the Reorganized Debtors may, upon appropriate motion, notice, and order of the Court, remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

11.05 Reservation of Rights. Nothing contained herein shall prohibit the Debtors or the Reorganized Debtors from prosecuting or defending any of the rights of the Debtors' Estates, including without limitation, the Avoidance Actions.

11.06 Severability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.

11.07 Successors and Assigns. The rights and obligations of any entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such entity.

11.08 Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

11.09 The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the bankruptcy Court to close the Chapter 11 Cases.

11.10 Section and Article References. Unless otherwise specified, all references in the Plan to Sections and Articles are to Sections and Articles of the Plan.

[ONE SIGNATURE PAGE TO FOLLOW]

Dated: New York, New York
April 12, 2016

SG BLOCKS, INC.

By: *\/s\/ Paul Galvin*
Name: Paul Galvin
Title: Chief Executive Officer

Dated: New York, New York
April 12, 2016

SG BUILDING BLOCKS, INC.

By: */s/ Paul Galvin*
Name: Paul Galvin
Title: Chief Executive Officer

Dated: New York, New York
April 12, 2016

ENDAXI INFRASTRUCTURE GROUP, INC.

By: */s/ Paul Galvin*
Name: Paul Galvin
Title: Chief Executive Officer

Delaware

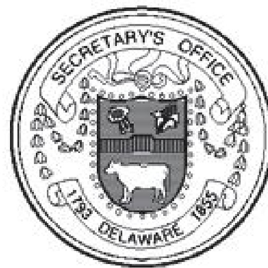
The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "SG BLOCKS, INC.", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF JUNE, A.D. 2016, AT 2:12 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

/s/ Jeffrey W. Bullock

Jeffrey W. Bullock, Secretary of State



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Date: 06-30-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:12 PM 06/30/2016
FILED 02:12 PM 06/30/2016
SR 20164729647 - File Number 2365700

STATE OF DELAWARE

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
SG BLOCKS, INC.

(Pursuant to Sections 242, 245 and 303 of the
General Corporation Law of the State of Delaware)

SG Blocks, Inc. (the ***"Corporation")***, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the Corporation is SG Blocks, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on December 29, 1993 under the name of PC411, INC. An Amended and Restated Certificate of Incorporation was filed with the Secretory of State of the State of Delaware on November 4, 2011. The Amended and Restated Certificate of Incorporation was amended on July 17, 2014 by the filing of a Certificate of Amendment.

2. This Amended and Restated Certificate of Incorporation has been filed pursuant to an order for relief with respect to the Corporation, which order for relief was entered in the United States Bankruptcy Court for the Southern District of New York on June 3, 2016, in accordance with the provisions of Section 303 of the General Corporation Law of the State of Delaware (the ***"General Corporation Law")***.

3. The text of the November 4, 2011 Amended and Restated Certificate of Incorporation, as amended by the July 17, 2014 amendment thereto, is hereby amended and restated in its entirety to read as follows:

FIRST: The name of this corporation is SG Blocks, Inc.

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH:

(a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is 305,405,010 shares, which are divided into (i) 300,000,000 shares of common stock, $0.01 par value per share ***("Common Stock")***, and (ii) 5,405,010 shares of preferred stock, $1.00 par value per share (the ***"Preferred Stock")***.

(b) The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby expressly authorized to provide for the issue of any or all of the unissued and undesignated shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the General Corporation Law. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the Corporation entitled to vote thereon, without a separate vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock.

(c) Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; *provided, however,* that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series of Preferred Stock are entitled, either separately or together as a class with the holders of one or more other series of Preferred Stock, to vote thereon by law or pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

FIFTH: The Corporation is to have perpetual existence.

SIXTH: For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation and of its directors and of its stockholders or any class thereof, as the case may be, it is further provided:

(a) The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the By-Laws. The phrase “whole Board” and the phrase “total number of directors” shall be deemed to have the same meaning, to wit, the total number of directors which the Corporation would have if there were no vacancies. No election of directors need be by written ballot.

(b) After the original or other By-Laws of the Corporation have been adopted, amended, or repealed, as the case may be, in accordance with the provisions of Section 109 of the General Corporation Law of the State of Delaware, and after the Corporation has received any payment for any of its stock, the power to adopt, amend, or repeal the By-Laws of the Corporation may be exercised by the Board of Directors of the Corporation.

(c) Whenever the Corporation shall be authorized to issue only one class of stock each outstanding share shall entitle the holder thereof to notice of, and the right to vote at, any meeting of stockholders. Whenever the Corporation shall be authorized to issue more than one class of stock no outstanding share of any class of stock which is denied voting power under the provisions of the certificate of incorporation shall entitle the holder thereof to the right to vote at any meeting of stockholders except as the provisions of paragraph (c)(2) of Section 242 of the General Corporation Law of the State of Delaware shall otherwise require; provided, that no share of any such class which is otherwise denied voting power shall entitle the holder thereof to vote upon the increase or decrease in the number of authorized shares of said class.

SEVENTH: The Corporation reserves the right to amend or repeal any provision contained in this Restated Certificate of Incorporation in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights herein conferred upon stockholders or directors are granted subject to this reservation.

EIGHTH: To the fullest extent permitted by the Delaware General Corporation Law, no director of the Corporation shall have personal liability to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that nothing in this article will eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. In the event the Delaware General Corporation Law is amended after the date hereof so as to authorize corporate action further eliminating or limiting the liability of directors of the Corporation, the liability of the directors will thereupon be eliminated or limited to the maximum extent permitted by the Delaware General Corporation Law, as so amended from time to time.

NINTH: The Corporation will indemnify any person:

(a) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, will not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe such person's action was unlawful, or

(b) who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust: or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in. good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification will be made in respect of any claim, issue or matters as to which such person will have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought will determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court will deem proper.

To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in section (a) and (b), or in defense of any claim, issue or matter therein, such person will be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. The rights conferred on any director of the Corporation under this Article Ninth will inure to the benefit of any entity that is affiliated with such director and that is a stockholder of the Corporation.

Any indemnification under section (a) and (b) (unless ordered by a court) will be made by the Corporation only as authorized in the specified case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in section (a) and (b). Such determination will be made (1) by the board of directors of a majority vote of the quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it will ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article Ninth. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

The indemnification and advancement of expenses provided by or granted pursuant to this Article Ninth will not be deemed exclusive of any other rights to which one seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

The Corporation may purchase and maintain, insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article Ninth.

For purposes of this Article Ninth, references to "the Corporation" will include, in addition to the resulting corporation., any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have the power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, will stand in the same position under this Article Ninth with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

For purpose of the Article Ninth, references to "other enterprises" will include employee benefit plans; references to "fines" will include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" will include any service as a director, officer, employee or agent of the Corporation that imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article Ninth.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article Ninth will continue as to a person who has ceased to be a director, officer, employee or agent and will inure to the benefit of the heirs, executors and administrators of such a person.

NINTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholder or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

(signature page follows)

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by the undersigned, its authorized officer, on this 30th day of June, 2016.

By: */s/ Paul M. Galvin*
Name: Paul M. Galvin
Title: Chief Executive Officer

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "SG BLOCKS, INC.", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF JUNE, A.D. 2016, AT 2:13 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

/s/ Jeffrey W. Bullock

Jeffrey W. Bullock, Secretary of State

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SR# 20164729690

Authentication: 202592226
Date: 07-01-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:12 PM 06/30/2016
FILED 02:13 PM 06/30/2016
SR 20164729690 - File Number 2365700

SG BLOCKS, INC.

CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES A CONVERTIBLE PREFERRED STOCK

(Pursuant to Section 151 of the
General Corporation Law of the State of Delaware)

The undersigned, Paul Galvin, does hereby certify that:

1. 1 am the Chief Executive Officer of SG Blocks, Inc., a Delaware corporation (the *"**Corporation**").*

2. The Corporation is authorized to issue 5,405,010 shares of preferred stock, none of which have been issued.

3. In accordance with the provisions of Section 303 of the General Corporation Law of the State of Delaware, this Certificate of Designation of Preferences, Rights and Limitations has been filed pursuant to an order for relief with respect to the Corporation, which order for relief was entered in the United States Bankruptcy Court for the Southern District of New York on June 3, 2016. Such order for relief provides for the issuance of a series of preferred stock for cash or exchange of other securities, rights or property and fixes and determines the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

*"**Affiliate**"* means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

*"**Alternate Consideration**"* shall have the meaning set forth in Section 7(e).

*"**Bankruptcy Event**"* means any of the following events: (a) the Corporation or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Significant Subsidiary thereof, (b) there is commenced against the Corporation or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Corporation or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Corporation or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Corporation or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (1) the Corporation or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, or (g) the Corporation or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

*"**Base Conversion Price**"* shall have the meaning set forth in Section 7(b).

*"**Business Day**"* means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

*"**Certificate of Incorporation**"* means the amended and restated certificate of incorporation of the Corporation, as amended from time to time.

*"**Change of Control Transaction**"* means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Company, by contract or otherwise) of in excess of 50% of the voting securities of the Company (other than by means of conversion or exercise of the Preferred Stock or any convertible debt or equity securities of the Company that are outstanding as of the effective date of this Certificate of Designation), (b) the Company merges into or consolidates with any other Person, or any Person merges into or consolidates with the Company and, after giving effect to such transaction, the stockholders of the Company immediately prior to such transaction own less than 50% of the aggregate voting power of the Company or the successor entity of such transaction, (c) the Company sells or transfers all or substantially all of its assets to another Person and the stockholders of the Company immediately prior to such transaction own less than 50% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a three year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the date hereof (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the date hereof), or (e) the execution by the Company of an agreement to which the Company is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the Corporation's common stock, par value $0.01 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Conversion Date" shall have the meaning set forth in Section 6(a).

"Conversion Price" shall have the meaning set forth in Section 6(c).

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

"Dilutive Issuance" shall have the meaning set forth in Section 7(b).

"Dilutive Issuance Notice" shall have the meaning set forth in Section 7(b).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Exempt Issuance" means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Corporation pursuant to any stock or option plan duly adopted by a majority of the non-employee members of the Board of Directors of the Corporation or a majority of the members of a committee of non-employee directors established for such purpose, (b) securities upon the conversion of any securities exercisable or exchangeable for or convertible into shares of Common Stock, and (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Corporation, provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Corporation and shall provide to the Corporation additional benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

"Fundamental Transaction" shall have the meaning set forth in Section 7(e).

“***GAAP***” means United States generally accepted accounting principles.

“***Holder***” shall have the meaning given such term in Section 2.

“***Junior Securities***” means the Common Stock and all other Common Stock Equivalents of the Corporation other than those securities which are explicitly senior or pari passu to the Preferred Stock in dividend rights or liquidation preference.

“***Liens***” means a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“***Liquidation***” means any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary. A Fundamental Transaction or Change of Control Transaction shall not be deemed a Liquidation.

“***Notice of Conversion***” shall have the meaning set forth in Section 6(a).

“***Original Issue Date***” means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

“***Person***” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“***Preferred Dividend***” shall have the meaning set forth in Section 3.

“***Preferred Stock***” shall have the meaning set forth in Section 2.

“***Securities Act***” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“***Share Delivery Date***” shall have the meaning set forth in Section 6(d).

“***Stated Value***” shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

“***Successor Entity***” shall have the meaning set forth in Section 7(e).

“***Business Day***” means any day other than a Saturday, Sunday or a day on which banks in the State of New York are authorized or obligated by law or executive order to close.

“***Transfer Agent***” means American Stock Transfer & Trust Company LLC, the current transfer agent of the Corporation, with a mailing address of: Operations Center, 6201 15th Avenue, Brooklyn, NY 11219, and any successor transfer agent of the Corporation.

Section 2. Designation, Amount and Par Value. 5,405,010 shares of the Company’s preferred stock, $1.00 par value per share, shall be designated as its Series A Convertible Preferred Stock (the *“**Preferred Stock**”)*. The number of shares so designated shall not be subject to increase without the written consent of all of the holders of the Preferred Stock (each, a *“**Holder**”* and collectively, the *“**Holders**”)*. Each share of Preferred Stock shall have a stated value equal to $1.00 (the *“**Stated Value**”)*.

Section 3. Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any other required consents) the Holders shall first receive a dividend on each outstanding share of Preferred Stock in an amount at least equal to the Stated Value (the ***"Preferred Dividend")***. After the Preferred Dividend has been paid to all Holders, the Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any other required consents) the Holders shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount at least equal to (a) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (i) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (ii) the number of shares of Common Stock issuable upon conversion of a share of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (b) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Preferred Stock determined by (A) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (B) multiplying such fraction by an amount equal to the Stated Value; provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Preferred Stock pursuant to this Section 3 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Preferred Stock dividend.

Section 4. Voting Rights. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each Holder shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class, However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designation, (b) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation senior to, or otherwise pari passu with, the Preferred Stock, (c) amend the Certificate of Incorporation or other charter documents in any manner that adversely affects any rights of the Holders, (d) increase the number of authorized shares of Preferred Stock, or (e) enter into any agreement with respect to any of the foregoing.

Section 5. Liquidation.

(a) If there is a Liquidation and, as of the date of the Liquidation, the Corporation has not paid the Preferred Dividend to all Holders, then the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the Stated Value, plus any accrued and unpaid dividends thereon and any other fees or liquidated damages then due and owing thereon under this Certificate of Designation, for each share of Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. If there is a Liquidation and, as of the date of the Liquidation, the Corporation has paid the Preferred Dividend to all Holders, then the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation, any accrued and unpaid dividends thereon and any other fees or liquidated damages then due and owing thereon under this Certificate of Designation, for each share of Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full.

(b) In the event of any Liquidation, after the payment of all preferential amounts required to be paid to the Holders pursuant to Section 5(a), the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the Holders and the holders of shares of the Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose each Holder as if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock (without regard to any limitations on conversion hereof) immediately prior to such Liquidation.

(c) The Corporation shall mail written notice of any Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

Section 6. Conversion.

(a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a *"**Notice of Conversion**")*. Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the *"**Conversion Date**")*. If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred, Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate(s) representing such shares of Preferred Stock promptly following the Conversion Date at issue (or, if such Holder alleges that any such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate). If so required by the Corporation, any certificate(s) surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered Holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Section 6(a), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate on the Conversion Date (notwithstanding the failure of the Holder to surrender any certificates at or prior to such time), except only the rights of the Holder to receive the Conversion Shares and any payment provided for in Section 6(d)(i). Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

(b) Mandatory Conversion. Upon the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Preferred Stock (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the *“**Mandatory Conversion Time**”),* all outstanding shares of Preferred Stock shall automatically be converted into that number of shares of Common Stock determined by dividing the Stated Value of such share of Preferred. Stock by the Conversion Price. All Holders shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 6(b). Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each Holder shall deliver the certificate(s) representing his, her or its shares of Preferred Stock to the Corporation (or, if such Holder alleges that any such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered Holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Section 6(b), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of any Holder to surrender any certificates at or prior to such time), except only the rights of the Holder(s) to receive the Conversion Shares and any payment provided for in Section 6(d)(i), Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

(c) Conversion Price. The conversion price for the Preferred Stock shall equal $1.00, subject to adjustment herein (the *“**Conversion. Price**”).*

(d) Mechanics of Conversion.

(i) Delivery of Conversion Shares Upon Conversion. Not later than three Business Days after each Conversion Date or the Mandatory Conversion Time, as applicable (the *“**Share Delivery Date**”),* the Corporation shall deliver, or cause to be delivered, to the converting Holder (A) the number of Conversion Shares being acquired upon the conversion of the Preferred Stock which, on or after the six month anniversary of the Original Issue Date, shall be free of restrictive legends and trading restrictions, and (B) a bank check in the amount of accrued and unpaid dividends (if the Corporation has elected or is required to pay accrued dividends in cash). On or after the six month anniversary of the Original Issue Date, the Corporation shall deliver the Conversion Shares required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

(ii) Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

(iii) Obligation Absolute: Partial Liquidated Damages. The Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(d)(i) on the second Business Day after the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each $5,000 of Stated Value of Preferred Stock being converted, $50 per Business Day (increasing to $100 per Business Day on the third Business Day and increasing to $200 per Business Day on the sixth Business Day after such damages begin to accrue) for each Business Day after such second Business Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion.

(iv) Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock and payment of dividends hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessabte.

(v) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

(vi) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

Section 7. Certain Adjustments.

(a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re classification.

(b) Subsequent Equity Sales. If, at any time while this Preferred Stock is outstanding, the Corporation sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the *"**Base Conversion Price**"* and such issuances, collectively, a *"**Dilutive Issuance**")* (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 7(b) in respect of an Exempt Issuance. The Corporation shall notify the Holders in writing, no later than the Business Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the *"**Dilutive Issuance Notice**").* For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice pursuant to this Section 7(b), upon the occurrence of any Dilutive Issuance, the Holders are entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether a Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the *"**Purchase Rights**"),* then each Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(d) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a *"**Distribution**"),* then, in each such case, each Holder shall be entitled to participate in such Distribution to the same extent that such Holder would have participated therein if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock (without regard to any limitations on conversion hereof) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution. Notwithstanding the foregoing, until such time as the Preferred Dividend has been paid to all Holders, the Corporation shall not declare or make any Distribution.

(e) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock (determined as if all shares of Preferred Stock had been converted into Common Stock in accordance with the terms hereof), (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a *"Fundamental Transaction"),* then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the ***"Alternate Consideration")*** receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the ***"Successor Entity")*** to assume in writing all of the obligations of the Corporation under this Certificate of Designation in accordance with the provisions of this Section 7(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred. Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and, be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation with the same effect as if such Successor Entity had been named as the Corporation herein.

(f) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(g) Notice to the Holders.

(i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder by facsimile or email a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize a Liquidation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered by facsimile or email to each Holder at its last facsimile number or email address as it shall appear upon the stock books of the Corporation, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. Each Holder shall remain entitled to convert any or all of its Preferred Stock during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address of the Company's principal office, Attention: Chief Executive Officer, or such other address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 8. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally or sent by a nationally recognized overnight courier service, by facsimile or by electronic mail, addressed to each Holder at the address, facsimile number or email address of such Holder appearing on the books of the Corporation. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered to a Holder via facsimile or via electronic mail prior to 5:30 p.m. (New York City time) on any date, (ii) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile or via electronic mail on a day that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day, (iii) the second Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages, accrued dividends and accrued interest, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

(e) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred. Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred. Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

(d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Court of Chancery in the State of Delaware for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that such party is not personally subject to the jurisdiction of the Court of Chancery in the State of Delaware, or that the Court of Chancery in the State of Delaware is an improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

(e) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

(f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

(g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(i) Status of Converted or Redeemed Preferred Stock. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A Preferred Stock.

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RESOLVED, FURTHER, that the Chairman, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the provisions of Delaware law.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 30th day of June 2016.

/s/ Paul M. Galvin

Name: Paul M. Galvin
Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock indicated below into shares of common stock, par value $0.01 per share (the ***"Common Stock"),*** of SG Blocks, Inc., a Delaware corporation (the ***"Corporation"),*** according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion:____

Number of shares of Preferred Stock owned prior to Conversion:_______________

Number of shares of Preferred Stock to be Converted: _______________________

Stated Value of shares of Preferred Stock to be Converted:____________________

Number of shares of Common Stock to be Issued:___________________________

Applicable Conversion Price:____

Number of shares of Preferred Stock subsequent to Conversion: _______________

Address for Delivery:______________________
or
DWAC Instructions:
Broker no:_________
Account no:_________

[HOLDER]

By: ______________________________________
Name:
Title:

Exhibit 4.1

Execution Version

DEBTOR IN POSSESSION CREDIT AGREEMENT

among

SG BLOCKS, INC.
as Borrower

and

SG BUILDING BLOCKS, INC. and ENDAXI INFRASTRUCTURE GROUP, INC.
as Guarantors

and

HILLAIR CAPITAL INVESTMENTS L.P.
as Lender

and

HILLAIR CAPITAL MANAGEMENT LLC
as Collateral Agent

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dated as of
October 15, 2015

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This DEBTOR IN POSSESSION CREDIT AGREEMENT (as the same may from time to time be amended, restated or otherwise modified, this "Agreement") is made effective as of the 15th day of October, 2015, by and among SG BLOCKS, INC., a Delaware corporation and debtor in possession, located at 3 Columbus Circle, 16th Floor, New York, New York 10019 ("Borrower"), SG BUILDING BLOCKS, INC., a Delaware corporation and debtor in possession located at 3 Columbus Circle, 16th Floor, New York, New York 10019 ("SG Building"), ENDAXI INFRASTRUCTURE GROUP, INC., a Delaware corporation and debtor in possession located at 3 Columbus Circle, 16th Floor, New York, New York 10019 ("Endaxi" and together with SG Building, the "Guarantors" and each a "Guarantor"), HILLAIR CAPITAL MANAGEMENT LLC, a Delaware limited liability company, located at 345 Lorton Avenue, Suite 303, Burlingame, California 94010, in its capacity as the Collateral Agent for the benefit of the Lenders, HILLAIR CAPITAL INVESTMENTS L.P., a Cayman Islands limited partnership located at 345 Lorton Avenue, Suite 303, Burlingame, California 94010, and its successors and assigns ("Hillair"), and each other Eligible Transferee, as hereinafter defined, that from time to time becomes a party hereto pursuant to Section 11.11 hereof (collectively, the "Lenders" and each a "Lender");

WITNESSETH:

WHEREAS, on October 15, 2015 (the "Filing Date"), the Borrower (the "Debtor") and the Guarantors (collectively, the "Debtors") filed petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York; and

WHEREAS, the Debtors intend to continue to operate their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code; and

WHEREAS, before the Filing Date, the Borrower, and to the extent applicable the Guarantors, entered into that certain: (i) $162,000 Original Issue Discount Senior Secured Convertible Debenture due November 3, 2015 (the "Bridge Debenture"), for a subscription amount of $150,000, issued by the Borrower to Hillair, in its capacity as a pre-petition lender (the "August 2015 Financing"); (ii) Securities Purchase Agreement, dated August 5, 2015, between the Borrower and Hillair (the "2015 Securities Purchase Agreement"); (iii) Subsidiary Guarantee dated August 5, 2015, executed and delivered by the Guarantors in favor of Hillair (the "2015 Subsidiary Guarantee"); (iv) Security Agreement dated August 5, 2015, executed and delivered by the Borrower and the Guarantors in favor of Hillair to secure the Borrower's obligations under the Bridge Indenture (the "2015 Security Agreement"); (v) Securities Exchange Agreement dated April 10, 2014 (the "Exchange Agreement") with Hillair, Frank Casano ("Casano") and Scott Masterson ("Masterson") who held certain existing Senior Convertible Debentures (the "Existing Debentures") pursuant to which the Existing Debentures with a stated maturity value of $1,680,000 were surrendered in exchange for new Senior Convertible Debentures with a stated interest rate of eight percent (8%) per year, a stated maturity value of $1,915,200, a conversion price of $0.25 per share, subject to adjustment, with a final maturity date of April 1, 2016 (the "2014 Exchange Debentures"); (vi) Securities Purchase Agreement, dated April 10, 2014, between the Borrower, Hillair, Dillon Hill Capital, LLC ("DHC"), Dillon Hill Investment Company, LLC ("DHIC"), Marc Nuccitelli ("Nuccitelli"), Casano and Masterson (the "2014 Securities Purchase Agreement"); (vii) 8% Original Discount Senior Secured Convertible Debenture(s) Due April 1, 2016 dated April 10, 2014, issued by the Borrower to Hillair, DHC, DHIC, Nucitelli, Casano and Masterson with an aggregate of $2,080,500 in principal amount and for a subscription amount of $1,825,000 (the "2014 New Debentures"); (viii) Subsidiary Guarantee dated April 10, 2014, executed and delivered by SG Building in favor of Hillair, DHC, DHIC, Nucitelli, Casano and Masterson (the "2014 Subsidiary Guarantee"); (ix) Security Agreement dated April 10, 2014, executed and delivered by the Borrower and SG Building in favor of Hillair, DHC, DHIC, Nucitelli, Casano and Masterson to secure the Borrower's obligations under the 2014 New Debentures (the "2014 Security Agreement"); and (x) all other documents, instruments, related writings, financing statements, security documents, warrants executed in connection therewith between the Borrower, and/or the Debtors, and/or any of the parties to the foregoing agreements (collectively, with the Bridge Debenture, the August 2015 Financing, the 2015 Securities Purchase Agreement, the 2015 Subsidiary Guarantee, the 2015 Security Agreement, the 2014 Exchange Debentures, the 2014 Securities Purchase Agreement, the 2014 New Debentures, the 2014 Subsidiary Guarantee, and the 2014 Security Agreement, the "Prepetition Loan Documents"). Hillair, Casano, Masterson, Nuccitelli, DHC and DHIC are collectively referred to herein as the "Prepetition Lenders;" and

WHEREAS, as of October 13, 2015, the Prepetition Lenders under the Prepetition Loan Documents are owed not less than: (i) $162,000.00 to Hillair on the Bridge Debenture; (ii) $2,489,760.00 on the 2014 Exchange Debentures; and (iii) $2,704,650.00 on the 2014 New Debentures, constituting principal obligations incurred directly by the Borrower as of October 13, 2015, plus any unpaid interest, fees, costs and expenses (the "Prepetition Obligations"); and

WHEREAS, the Prepetition Obligations are secured by liens (the "Prepetition Liens") on substantially all of the existing and after-acquired assets of the Borrower and the Guarantors, and such liens are perfected and, except as otherwise permitted in the Prepetition Loan Documents, have priority over other liens; and

WHEREAS, the Borrower has requested, that the Lender provide financing to the Borrower pursuant to Section 364(c)(1), (2) and (3) and Section 364(d) of the Bankruptcy Code, and enter into this Agreement pursuant to which the Lender would extend to the Borrower a multi-draw term credit facility as needed in accordance with the Budget (defined below) not to exceed at any one time outstanding $280,000.00 prior to the entry of the Final Order and $320,000.00 after the entry of the Final Order (in each case, as such amount may be reduced pursuant to this Agreement), to be available in the form of term loans advanced by the Lender from time to time at the request of and for the account of the Borrower; and

WHEREAS, the Lender is willing to extend such credit to the Borrower on the terms and conditions set forth herein and in the other Loan Documents in accordance with Section 364(c)(1), (2) and (3) and Section 364(d) of the Bankruptcy Code, so long as:

(a) such post-petition credit obligations are (i) secured by Liens on substantially all of the property and interests, real and personal, tangible and intangible, of the Borrower and the Guarantors, whether now owned or hereafter acquired, subject to priority only to certain Liens and claims in respect of the Carve Out (as defined below) as herein provided; and (ii) given super priority status as provided in the Orders (as defined below); and

(b) the Prepetition Lenders receive certain adequate protection for the Borrower's and/or any Guarantor's use, sale or lease of collateral, including the Borrower's use of cash collateral, and the priming of the Prepetition Liens securing the Prepetition Obligations; and

WHEREAS, the Borrower and the Guarantors have agreed to provide such collateral, super priority claims and adequate protection subject to the approval of the Bankruptcy Court.

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE I. DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Bidder(s)" means that term as defined in Section 4.2(o) of this Agreement. "Account" means all accounts, as defined in the U.C.C.

"Account Debtor" means any Person obligated to pay all or any part of any Account in any manner and includes (without limitation) any Guarantor thereof.

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in: (a) the acquisition of all or substantially all of the assets of any Person (other than a Company), or any business or division of any Person (other than a Company); (b) the acquisition of in excess of fifty percent (50%) of the outstanding capital stock (or other equity interest) of any Person (other than a Company); or (c) the acquisition of another Person (other than a Company) by a merger, amalgamation or consolidation or any other combination with such Person.

"Advantage" means any payment (whether made voluntarily or involuntarily, by offset of any deposit or other indebtedness or otherwise) received by any Lender, in respect of the Obligations, if such payment results in that Lender having less than its pro rata share (based upon its Applicable Commitment Percentage) of the Obligations then outstanding.

"Affiliate" means any Person, directly or indirectly, controlling, controlled by or under common control with a Company and "control" (including the correlative meanings, the terms "controlling", "controlled by" and "under common control with") means the power, directly or indirectly, to direct or cause the direction of the management and policies of a Company, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means that term as defined in the first paragraph hereof.

“Applicable Commitment Percentage” means, for each Lender with respect to the Total Commitment, the percentage, if any, set forth opposite such Lender’s name under the column headed “Term Credit Commitment Percentage”, as listed in Schedule 1 hereto.

“Applicable Margin” means twelve percent (12%) per annum.

“Asset Brokers” means that term as defined in Section 5.37 of this Agreement.

“Assignment Agreement” means an Assignment and Acceptance Agreement in the form of the attached Exhibit I.

“Authorized Officer” means a Financial Officer or other individual authorized by a Financial Officer in writing (with a copy to Agent) to handle certain administrative matters in connection with this Agreement.

“Avoidance Actions” means avoidance actions of the Borrower under Chapter 5 of the Bankruptcy Code (and the proceeds thereof).

“Bankruptcy Code” means Title 11 of the United States Code.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.

“Base Rate Loan” means a Term Loan described in Section 2.2(a) hereof, that shall be denominated in Dollars and on which the Borrower shall pay interest at a rate based on the Applicable Margin.

“Borrower” means that term as defined in the first paragraph hereof

“Budget” means a thirteen (13) week budget projecting on a week-by-week basis the Debtors’: (i) sales; (ii) cash receipts; (iii) disbursements, including, without limitation, line items for payroll, trade debt, interest and fees under this Agreement, interest and fees on other indebtedness and professional fees); and (iv) amounts of Term Loans to be requested and outstanding, substantially in the form of the attached Annex 1 and in substance satisfactory to Lender, including as such budget is updated, amended or revised each week with the agreement of Lender, in its sole discretion.

“Business Day” means any day that is not a Saturday, a Sunday or another day of the year on which national banks are authorized or required to close in New York, New York.

“Capital Distribution” means a payment made, liability incurred or other consideration given by a Company to any Person that is not a Company, for the purchase, acquisition, redemption, repurchase, payment or retirement of any capital stock or other equity interest of such Company or as a dividend, return of capital or other distribution (other than any stock dividend, stock split or other equity distribution payable only in capital stock or other equity of such Company) in respect of such Company’s capital stock or other equity interest.

“Cash Reserve” means that term as defined in Section 8.6(a) of this Agreement.

"Carve Out" means, at any time, an amount equal to the sum of the then unpaid (a) allowed administrative expenses pursuant to 28 U.S.C. Section 1930(a)(6), plus (b) allowed fees and expenses incurred by bankruptcy counsel retained by Borrower, plus (c) allowed fees and expenses incurred by the professionals retained by any Statutory Committee pursuant to Sections 327 and 1103 of the Bankruptcy Code (excluding, however, fees, costs and expenses of third party professionals employed by the members of any such Statutory Committee). For purposes of clause (b) above, the Carve Out shall be limited to accrued and unpaid professional fees and expenses in a maximum aggregate amount of $75,000.00. For purposes of clause (c) above, the Carve Out shall be limited to accrued and unpaid professional fees and expenses in a maximum aggregate amount of $25,000.00.

"Case" means, the Debtors' jointly administered reorganization case under Chapter 11 of the Bankruptcy Code (Chapter 11 Jointly Administered Case No. 15-12790 (JLG) pending in the United States Bankruptcy Court for the Southern District of New York.

"Closing Date" means the date on which all of the conditions set forth in Section 4.2 are satisfied to the satisfaction of Lender, or waived in writing by, Lender.

"Code" means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated thereunder.

"Collateral" means all of the "Collateral", as defined in the Security Agreement.

"Collateral Agent" means Hillair Capital Management LLC, acting as Collateral Agent for the Lender pursuant to the Security Documents, and any successor designated as Collateral Agent pursuant to Section 10.12 hereof.

"Commitment" means, with respect to each Lender, (a) prior to the entry of the Final Order, the amount set forth opposite such Lender's name in Schedule 1 hereto directly below the column titled "Interim Order Commitment" (the "Interim Order Commitment") and (b) on or after the entry of the Final Order, the amount set forth opposite such Lender's name in Schedule 1 hereto directly below the column titled "Final Order Commitment" (the "Final Order Commitment"), in each case as may be reduced from time to time pursuant to the terms hereof.

"Commitment Period" means the period from the Closing Date to, but not including, the Maturity Date.

"Company" means Borrower.

"Compliance Certificate" means a Compliance Certificate in the form of the attached Exhibit H.

"Consultant" means that term as defined in Section 5.2 of this Agreement.

"Control Agreement" means each Deposit Account Control Agreement among a Credit Party, Collateral Agent and a depository institution, dated on or after the Closing Date, and each Deposit Account Control Agreement, among a Credit Party, Prepetition Lender and a depository institution, in each case, as the same may from time to time be amended, restated or otherwise modified.

"Controlled Group" means the Company and each Person required to be aggregated with a Company under Code Section 414(b), (c), (m) or (o).

"Credit Event" means the making by the Lender(s) of a Loan.

"Credit Party" means Borrower and any Guarantor.

"Creditors' Committee" means the official committee of unsecured creditors in the Case. "Debtors" means that term as defined in the first Whereas paragraph of this Agreement.

"Default" means an event or condition that constitutes, or with the lapse of any applicable grace period or the giving of notice or both would constitute, an Event of Default, and that has not been waived by the Required Lenders (or, if applicable, all of the Lenders) in writing.

"Default Rate" means (a) with respect to any Loan, a rate per annum equal to five percent (5%) in excess of the Derived Base Rate otherwise applicable thereto.

"Deposit Account" means (a) a deposit account, as defined in the U.C.C.; (b) any other deposit account; and (c) any demand, time, savings, checking, passbook or similar account maintained with a bank, savings and loan association, credit union or similar organization.

"Derived Base Rate" means a rate per annum equal to 12%.

"Dollar" or the $ sign means lawful money of the United States of America.

"Eligible Transferee" means a commercial bank, financial institution or other "accredited investor" (as defined in SEC Regulation D) that is not a Borrower, a Guarantor, a Subsidiary or an Affiliate.

"Environmental Laws" means all provisions of law (including the common law), statutes, ordinances, codes, rules, guidelines, policies, procedures, orders in council, regulations, permits, licenses, judgments, writs, injunctions, decrees, orders, awards and standards promulgated by a Governmental Authority or by any court, agency, instrumentality, regulatory authority or commission of any of the foregoing concerning environmental health or safety and protection of, or regulation of the discharge of substances into, the environment.

"Equipment" means all equipment, as defined in the U.C.C.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated pursuant thereto.

"ERISA Event" means (a) the existence of a condition or event with respect to an ERISA Plan that presents a risk of the imposition of an excise tax or any other liability on a Company or of the imposition of a Lien on the assets of a Company; (b) the engagement by a Controlled Group member in a non-exempt "prohibited transaction" (as defined under ERISA Section 406 or Code Section 4975) or a breach of a fiduciary duty under ERISA that could result in liability to a Company; (c) the application by a Controlled Group member for a waiver from the minimum funding requirements of Code Section 412 or ERISA Section 302 or a Controlled Group member is required to provide security under Code Section 401(a)(29) or ERISA Section 307; (d) the occurrence of a Reportable Event with respect to any Pension Plan as to which notice is required to be provided to the PBGC; (e) the withdrawal by a Controlled Group member from a Multiemployer Plan in a "complete withdrawal" or a "partial withdrawal" (as such terms are defined in ERISA Sections 4203 and 4205, respectively); (f) the involvement of, or occurrence or existence of any event or condition that makes likely the involvement of, a Multiemployer Plan in any reorganization under ERISA Section 4241; (g) the failure of an ERISA Plan (and any related trust) that is intended to be qualified under Code Sections 401 and 501 to be so qualified or the failure of any "cash or deferred arrangement" under any such ERISA Plan to meet the requirements of Code Section 401(k); (h) the taking by the PBGC of any steps to terminate a Pension Plan or appoint a trustee to administer a Pension Plan, or the taking by a Controlled Group member of any steps to terminate a Pension Plan; (i) the failure by a Controlled Group member or an ERISA Plan to satisfy any requirements of law applicable to an ERISA Plan; (j) the commencement, existence or threatening of a claim, action, suit, audit or investigation with respect to an ERISA Plan, other than a routine claim for benefits; or (k) any incurrence by or any expectation of the incurrence by a Controlled Group member of any liability for post-retirement benefits under any Welfare Plan, other than as required by ERISA Section 601, et seq. or Code Section 4980B.

"ERISA Plan" means an "employee benefit plan" (within the meaning of ERISA Section 3(3)) that a Controlled Group member at any time sponsors, maintains, contributes to, has liability with respect to or has an obligation to contribute to such plan.

"Event of Default" means an event or condition that shall constitute an event of default as defined in Article VII hereof.

"Excluded Taxes" means, in the case of each Lender, taxes imposed on or measured by its overall net income or branch profits, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such Lender, as the case may be, is organized or in which its principal office is located, or, in the case of any Lender, in which its applicable lending office is located.

"Existing Indebtedness" means that term as defined in Section 5.8 of this Agreement.

"Federal Funds Effective Rate" means, for any day, the rate per annum (rounded upward to the nearest one one-hundredth of one percent (1/100 of 1%)) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the Closing Date.

“Filing Date” means that term as defined in the first Whereas paragraph of this Agreement.

“First Days Orders” means customary first day orders for a debtor in Chapter 11 of the Bankruptcy Code and in form and substance satisfactory to Lender.

“Final Order” means a final order of the Bankruptcy Court in the Case authorizing and approving, among other things, this Agreement and the other Loan Documents under Section 364(c) and (d) of the Bankruptcy Code and entered at or after a final hearing, in form and substance satisfactory to Lender and its counsel. The Final Order shall, among other things, have:

(a) authorized the transactions contemplated by this Agreement and the extensions of credit under this Agreement in an amount not greater than the Total Commitment provided for herein and any extension of the scheduled Maturity Date as provided in the definition of the term “Maturity Date”;

(b) granted the claim status and Liens described in Article IX and prohibited the granting of additional Liens on the assets of Borrower other than Permitted Liens; and

(c) provided that such Liens are automatically perfected by the entry of the Final Order and also granted to Lender relief from the automatic stay of Section 362(a) of the Bankruptcy Code to enable Lender, if Lender elects to do so in its discretion, to make all filings and recordings and to take all other actions considered necessary or advisable by Lender to perfect, protect and insure the priority of its Liens upon the Collateral as a matter of nonbankruptcy law.

“Final Order Commitment” means that term as defined in the definition of “Commitment.”

“Financial Officer” means any of the following officers of the Borrower: chief executive officer, president, chief financial officer or treasurer.

“First Priority Liens” means that term as defined in Section 9.3 of this Agreement.

“GAAP” means generally accepted accounting principles in the United States as then in effect, which shall include the official interpretations thereof by the Financial Accounting Standards Board, applied on a basis consistent with the past accounting practices and procedures of Borrower.

“General Intangibles” means all (a) general intangibles, as defined in the U.C.C.; and (b) choses in action, causes of action, intellectual property, customer lists, corporate or other business records, inventions, designs, patents, patent applications, service marks, registrations, trade names, trademarks, copyrights, licenses, goodwill, computer software, rights to indemnification and tax refunds.

"Governmental Authority" means any nation or government, any state, province or territory or other political subdivision thereof, any governmental agency, department, authority, instrumentality, regulatory body, court, central bank or other governmental entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization exercising such functions.

"Guarantor" means that term as defined in the first paragraph hereof

"Indebtedness" means, for the Borrower and/or any Guarantor, without duplication:

(a) all obligations to repay borrowed money, direct or indirect, incurred, assumed, or guaranteed;

(b) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable incurred in the ordinary course of business; (c) all obligations under conditional sales or other title retention agreements; (d) all obligations (contingent or otherwise) under any letter of credit or banker's acceptance; (e) all net obligations under any currency swap agreement, interest rate swap, cap, collar or floor agreement or other interest rate management device or any hedge agreement; (f) all synthetic leases; (g) all lease obligations that have been or should be capitalized on the books of the Company in accordance with GAAP; (h) all obligations of the Borrower with respect to asset securitization financing programs to the extent that there is recourse against the Borrower or the Borrower is liable (contingent or otherwise) under any such program; (i) all obligations to advance funds to, or to purchase assets, property or services from, any other Person in order to maintain the financial condition of such Person; (j) all indebtedness of the types referred to in subparts (a) through (i) 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; (k) any other transaction (including forward sale or purchase agreements) having the commercial effect of a borrowing of money entered into by the Borrower to finance its operations or capital requirements; and (1) any guaranty of any obligation described in subparts (a) through (k) hereof.

"Interim Order" means an order of the Bankruptcy Court in the Case authorizing and approving this Agreement on an interim basis under Section 364(c) of the Bankruptcy Code and entered at a preliminary hearing under Bankruptcy Rule 4001, in form and substance reasonably satisfactory to the Lender and its counsel. The Interim Order shall, among other things, have:

(a) authorized the transactions contemplated by this Agreement and the extension of credit under this Agreement in an amount not greater than the Total Commitment and any extension of the scheduled Maturity Date as provided in the definition of the term "Maturity Date";

(b) granted the claim status and Liens described in Article IX, and prohibited the granting of additional Liens on the assets of the Borrower and the Guarantors other than Permitted Liens; and

,(c) provided that such Liens are automatically perfected by the entry of the Interim Order and also granted to the Lender for the benefit of the Lenders, relief from the automatic stay of Section 362(a) of the Bankruptcy Code to enable the Lender, if the Lender elects to do so in its discretion, to make all filings and recordings and to take all other actions considered necessary or advisable by the Lender to perfect, protect and insure the priority of its Liens upon the Collateral as a matter of nonbankruptcy law.

“Interim Order Commitment” means that term as defined in the definition of “Commitment.”

“Inventory” means all inventory, as defined in the U.C.C.

“Landlord’s Waiver” means a landlord’s waiver or mortgagee’s waiver, each in form and substance satisfactory to Agent, delivered by a Company in connection with this Agreement, as such waiver may from time to time be amended, restated or otherwise modified or replaced.

“Lender” means that term as defined in the first paragraph hereof.

“Lien” means any mortgage, deed of trust, security interest, lien (statutory or other), charge, assignment, hypothecation, encumbrance on, pledge or deposit of, or conditional sale, leasing (other than Operating Leases, sale with a right of redemption or other title retention agreement and any capitalized lease with respect to any property (real or personal) or asset.

“Loan” means a Term Loan granted to Borrower by the Lender in accordance with Section 2.2 hereof.

“Loan Documents” means, collectively, this Agreement, each Note, each Guaranty Agreement, each Security Document, as any of the foregoing may from time to time be amended, restated or otherwise modified or replaced, and any other document delivered pursuant thereto.

“Mandatory Prepayment” means that term as defined in Section 2.12(a) hereof.

“Material Adverse Effect” means a material adverse effect on: (a) the business, assets, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Borrower (other than the commencement of the Case and the circumstances giving rise to its commencement); (b) the business, assets, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Borrower (other than the commencement of the Case and the circumstances giving rise to its commencement); (c) the rights and remedies of Lender or the Lenders under any Loan Document; (d) the ability of any Credit Party to perform its obligations under any Loan Document to which it is a party, (other than, in any case, on account of the filing or pendency of the Case); or (e) the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document to which it is a party (other than, in any case, on account of the filing or pendency of the Case).

“Material Indebtedness Agreement” means any debt instrument, lease (capital, operating or otherwise), guaranty, contract, commitment, agreement or other arrangement evidencing or entered into in connection with any Indebtedness of the Borrower in excess of the amount of $25,000.00.

"Material Recovery Event" means (a) any casualty loss in respect of assets of the Company covered by casualty insurances, and (b) any compulsory transfer or taking under threat of compulsory transfer of any asset of the Company by any Governmental Authority.

"Maturity Date" means the earliest to occur of (a) the date that is six (6) months from the Filing Date, and (b) the Termination Date.

"Moody's" means Moody's Investors Service, Inc., and any successor to such company.

"Multiemployer Plan" means a Pension Plan that is subject to the requirements of Subtitle E of Title IV of ERISA.

"Note" or "Notes" means a Term Note and/or any other promissory note delivered pursuant to this Agreement.

"Notice of Loan" means a Notice of Loan in the form of the attached Exhibit G.

"Obligations" means, collectively: (a) all Indebtedness and other obligations incurred by Borrower, any Guarantor, Collateral Agent, or any Lender (or any affiliate thereof) pursuant to this Agreement and the other Loan Documents, and includes the principal of and interest on all Loans; (b) each extension, renewal or refinancing of the foregoing, in whole or in part; (c) the commitment and other fees, and any prepayment fees payable hereunder; and (d) all Related Expenses.

"Operating Leases" means all real or personal property leases under which the Borrower and/or any Guarantor is bound or obligated as a lessee or sublessee and which, under GAAP, are not required to be capitalized on a balance sheet of the Borrower or the Guarantor, as applicable, provided that Operating Leases shall not include any such lease under which Borrower or any Guarantor is also bound as the lessor or sublessor.

"Orders" means, collectively, the Interim Order and the Final Order.

"Organizational Documents" means, with respect to any Person (other than an individual), such Person's Articles (Certificate) of Incorporation, operating agreement or equivalent formation documents, and Regulations (Bylaws), or equivalent governing documents, and any amendments to any of the foregoing.

"Other Prepetition Liens" means the prepetition liens and security interests (exclusive of those in respect of the Prepetition Loan Documents) which are (a) valid, perfected and senior to the prepetition liens and security interests in respect of the Prepetition Loan Documents, and (b) not avoidable, including, without limitation, such liens and security interests listed on Annex 3 hereto.

"Other Taxes" means any and all present or future stamp or documentary taxes or any other excise, ad valorem or property taxes, goods and services taxes, harmonized sales taxes and other sales taxes, use taxes, value added taxes, charges or similar taxes or levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Participant" means that term as defined in Section 11.11 hereof

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001, as amended from time to time.

"Payment in Full" means the irrevocable payment in full in cash in United States Dollars of all of the Secured Obligations and all Prepetition Obligations.

"PBGC" means the Pension Benefit Guaranty Corporation, and its successor.

"Pension Plan" means an ERISA Plan that is a "pension plan" (within the meaning of ERISA Section 3(2)).

"Permitted Liens" means that term as defined in Section 5.9 of this Agreement.

"Person" means any individual, sole proprietorship, partnership, joint venture, unincorporated organization, corporation, limited liability company, unlimited liability company, institution, trust, estate, Governmental Authority or any other entity.

"Pledge Agreement" means any Pledge Agreement executed by Borrower, on or after the Closing Date, as any of the foregoing may from time to time be amended, restated or otherwise modified.

"Pledged Notes" means the promissory notes payable to Borrower, as described on Schedule 5 hereto, and any additional or future note that may hereafter from time to time be payable to Borrower.

"Pledged Securities" means all of the shares of capital stock or other equity interest of a Subsidiary of a Credit Party, whether now owned or hereafter acquired or created, and all proceeds thereof; provided that Pledged Securities shall only include up to sixty-five percent (65%) of the shares of voting capital stock or other voting equity interest of any first-tier foreign subsidiary and shall not include any foreign subsidiary other than a first-tier foreign subsidiary. Schedule 4 hereto lists, as of the Closing Date, all of the Pledged Securities.

"Prepetition Collateral" means "Collateral" as defined in the Prepetition Loan Documents.

"Prepetition Collateral Agent" means Hillair Capital Management LLC.

"Prepetition Loan Documents" means that term as defined in the third Whereas paragraph of this Agreement.

"Prepetition Guaranties of Payment" means each guaranty obligation of the Guarantors in favor of any Prepetition Lender executed and delivered pursuant to the Prepetition Loan Documents.

"Prepetition Lenders" means that term as defined in the third Whereas paragraph of this Agreement.

"Prepetition Liens" means that term as defined in the fifth Whereas paragraph of this Agreement.

"Prepetition Obligations" means that term as defined in the fourth Whereas paragraph of this Agreement.

"Reaffirmation of Guaranty of Payment" means a Reaffirmation of Guaranty of Payment, by each Guarantor of any Prepetition Guaranties of Payment, in the form of the attached Exhibit J, reaffirming their respective obligations to the Prepetition Lenders.

"Real Property" means any real property owned by the Borrower or any Guarantor.

"Register" means that term as described in Section 11.10(i) hereof.

"Related Expenses" means any and all costs, liabilities and expenses (including, without limitation, losses, damages, penalties, claims, actions, attorneys' fees, legal expenses, judgments, suits and disbursements): (a) incurred by Lender or Collateral Agent, or imposed upon or asserted against the Collateral Agent or any Lender in connection with the Case, the negotiation or preparation of this Agreement or any attempt by the Collateral Agent and the Lender to (i) obtain, preserve, perfect or enforce any Loan Document or any security interest evidenced by any Loan Document; (ii) obtain payment, performance or observance of any and all of the Obligations; or (iii) maintain, insure, audit, collect, preserve, repossess or dispose of any of the collateral securing the Obligations or any part thereof, including, without limitation, costs and expenses for appraisals, assessments and audits of the Company or any such collateral; or (b) incidental or related to (a) above, including, without limitation, interest thereupon from the date incurred, imposed or asserted until paid at the Default Rate.

"Related Writing" means each Loan Document, and any other assignment, mortgage, security ageement, guaranty agreement, subordination agreement, financial statement, audit report or other writing furnished by any Credit Party, or any of its officers, to the Lender pursuant to or otherwise in connection with this Agreement.

"Reportable Event" means a reportable event as that term is defined in Title IV of ERISA, except actions of general applicability by the Secretary of Labor under Section 110 of such Act.

"Required Lenders" shall mean the holders of at least sixty-six and two-thirds percent (66-2/3%) of the Total Commitment or, if after the termination of the Total Commitment, the Term Credit Exposure.

"Requirement of Law" means, as to any Person, any law, treaty, rule or regulation or determination or policy statement or interpretation of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property.

"Reserves" means any reserves against the Total Commitment established by the Lender from time to time in such amounts as the Lender shall determine.

"Restricted Payment" means, with respect to the Borrower: (a) any Capital Distribution, (b) any amount paid by the Borrower in repayment, redemption, retirement or repurchase; directly or indirectly, of any Subordinated Indebtedness; (c) any amount paid by the Borrower in respect of any management, consulting or other similar arrangement with any shareholder of Borrower or Affiliate, if any; or (d) any amount paid by Borrower with respect to any pre-Filing Date Indebtedness or obligations, other than pursuant to (i) the First Day Orders, (ii) this Agreement, or (iii) other orders of the Bankruptcy Court acceptable to the Required Lenders.

"SEC" means the United States Securities and Exchange Commission, or any governmental body or agency succeeding to any of its principal functions.

"Secured Obligations" means collectively (a) the Obligations, and (b) any other obligations and liabilities of the Borrower and/or any Guarantor owing to Lender.

"Security Agreement" means each Senior Security Agreement, executed and delivered by Borrower in favor of Collateral Agent, dated as of the Closing Date, and any other Security Agreement executed on or after the Closing Date, as the same may from time to time be amended, restated or otherwise modified.

"Security Documents" means each Security Agreement, each Pledge Agreement, each mortgage, each Landlord's Waiver, each Control Agreement, each U.C.C. Financing Statement or similar filing as to a jurisdiction located outside of the United States of America, filed in connection herewith or perfecting any interest created in any of the foregoing documents, and any other document pursuant to which any Lien is granted by Borrower, any Guarantor, or any other Person to Collateral Agent, as security for the Secured Obligations, or any part thereof, and each other agreement executed in connection with any of the foregoing, as any of the foregoing may from time to time be amended, restated or otherwise modified or replaced.

"Standard & Poor's" means Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., and any successor to such company.

"Statutory Committee" means any committee appointed in the Case pursuant to Section 1102 of the Bankruptcy Code.

"Subordinated" means, as applied to Indebtedness, Indebtedness that shall have been subordinated (by written terms or written agreement being, in either case, in form and substance satisfactory to the Required Lenders) in favor of the prior payment in full of the Obligations.

"Subsidiary" means: (a) a corporation more than fifty percent (50%) of the Voting Power of which is owned, directly or indirectly, by Borrower; (b) a partnership, limited liability company or unlimited liability company of which Borrower, directly or indirectly, is a general partner or managing member, as the case may be, or otherwise has an ownership interest greater than fifty percent (50%) of all of the ownership interests in such partnership, limited liability company or unlimited liability company; or (c) any other Person (other than a corporation, partnership, limited liability company or unlimited liability company) in which Borrower, directly or indirectly, has at least a majority interest in the Voting Power or the power to elect or direct the election of a majority of directors or other governing body of such Person.

“Superpriority Claim” means a claim against the Borrower and/or any Guarantor in the Case which is an administrative expense claim having priority over any and all administrative expenses of the kind specified in Sections 503(b), 506(c) and 507 of the Bankruptcy Code.

“Taxes” means any and all present or future taxes of any kind, including but not limited to, levies, imposts, duties, surtaxes, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority (together with any interest, penalties, fines, additions to taxes or similar liabilities with respect thereto) other than Excluded Taxes.

“Term Credit Exposure” means, at any time, the aggregate principal amount of all Term Loans outstanding.

“Term Note” means a Term Note, in the form of the attached Exhibit A, executed and delivered pursuant to Section 2.6(a) hereof.

“Term Loan” means a Loan made to Borrower by the Lender in accordance with Section 2.2(a) hereof.

“Termination Date” means that term as defined in the Interim Order and the Final Order.

“Testing Period” means each period of four (4) consecutive fiscal weeks of the Borrower, in each case, taken as one accounting period, commencing with the week during which the Closing Date occurred.

“Total Commitment” means (a) prior to the entry of the Final Order, the sum of each Lender’s Interim Order Commitment, and (b) on or after the entry of a Final Order, the sum of each Lender’s Final Order Commitment, in each case as it may be reduced from time to time pursuant to the terms hereof.

“U.C.C.” means the Uniform Commercial Code, as in effect from time to time in New York.

“U.C.C. Financing Statement” means a financing statement filed or to be filed in accordance with the Uniform Commercial Code, as in effect from time to time, in the relevant state or states.

“Voting Power” means, with respect to any Person, the exclusive ability to control, through the ownership of shares of capital stock, partnership interests, membership interests or otherwise, the election of members of the board of directors or other similar governing body of such Person. The holding of a designated percentage of Voting Power of a Person means the ownership of shares of capital stock, partnership interests, membership interests or other interests of such Person sufficient to control exclusively the election of that percentage of the members of the board of directors or similar governing body of such Person.

"Welfare Plan" means an ERISA Plan that is a "welfare plan" within the meaning of ERISA Section 3(1).

Section 1.2 Accounting Terms. Any accounting term not specifically defined in this Article I shall have the meaning ascribed thereto by GAAP.

Section 1.3 Terms Generally. The foregoing definitions shall be applicable to the singular and plural forms of the foregoing defined terms. Unless otherwise defined in this Article I, terms that are defined in the U.C.C. are used herein as so defined.

Section 1.4 Confirmation of Recitals. Borrower, the Guarantors, and the Lender hereby confirm the statements set forth in the recitals of this Agreement.

ARTICLE II. AMOUNT AND TERMS OF CREDIT

Section 2.1 Amount and Nature of Credit.

(a) Subject to the terms and conditions of this Agreement, the Lender, during the Commitment Period and to the extent hereinafter provided, shall make Loans to the Borrower at the request of Borrower, in such aggregate amount as Borrower shall request pursuant to the Total Commitment; provided that in no event shall the aggregate principal amount of all Loans outstanding under this Agreement be in excess of the Total Commitment. Notwithstanding the foregoing, to the extent that there exists any amounts in the Cash Reserve, Borrower shall utilize such amounts in full before requesting a Loan hereunder.

(b) Each Lender, for itself and not one for any other, agrees to make Loans, during the Commitment Period, on such basis that, immediately after the completion of any borrowing by Borrower, the aggregate outstanding principal amount of Loans made by such Lender shall not be in excess of the Commitment for such Lender.

Each borrowing from the Lender shall be made pro rata according to the respective Applicable Commitment Percentages of the Lenders.

Section 2.2 Term Credit. Subject to the terms and conditions of this Agreement, during the Commitment Period, the Lenders shall make a Term Loan or Term Loans to the Borrower in such amount or amounts as Borrower, through an Authorized Officer, may from time to time request, but not exceeding in aggregate principal amount at any time outstanding hereunder the Total Commitment. Borrower shall have the option, subject to the terms and conditions set forth herein, to borrow Term Loans, maturing on the last day of the Commitment Period, by means of Base Rate Loans. Notwithstanding the foregoing, to the extent that there exist any amounts in the Cash Reserve, Borrower shall utilize such amounts in full before requesting a Loan hereunder.

Section 2.3 [Reserved]

Section 2.4 [Reserved]

Section 2.5 Interest.

(a) Term Loans. Borrower shall pay interest on the unpaid principal amount of a Term Loan that is a Base Rate Loan outstanding from time to time from the date thereof until paid at the Derived Base Rate from time to time in effect, which shall be paid in kind and capitalized on the last day of each month (and thereby added to principal, which shall thereafter accrue interest).

(b) Default Rate. Anything herein to the contrary notwithstanding, if an Event of Default shall occur: (i) the principal of each Loan and the unpaid interest thereon shall bear interest, until paid, at the Default Rate; and (ii) in the case of any other amount not paid when due from Borrower hereunder or under any other Loan Document, such amount shall bear interest at the Default Rate.

(c) Limitation on Interest. In no event shall the rate of interest hereunder exceed the maximum rate allowable by law. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law: (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest; (ii) exclude voluntary prepayments and the effects thereof; and (iii) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations.

Section 2.6 Evidence of Indebtedness. Upon the request of a Lender, to evidence the obligation of Borrower to repay the Term Loans made by such Lender and to pay interest thereon, Borrower shall execute a Term Note payable to the order of such Lender in the principal amount of its Applicable Commitment Percentage of the Total Commitment, or, if less, the aggregate unpaid principal amount of Term Loans made by such Lender; provided that the failure of a Lender to request a Term Note shall in no way detract from Borrower's obligations to such Lender hereunder.

Section 2.7 Notice of Credit Event; Funding of Loans.

(a) Notice of Credit Event. Borrower, through an Authorized Officer, shall provide to Lender Notice of Loan prior to 11:00 A.M. (Eastern time) on the proposed date of borrowing of any Base Rate Loan.

(b) Funding of Loans. Lender shall notify the other Lenders, if any, of the date and amount promptly upon the receipt of a Notice of Loan and, in any event, by 12:00 P.M. (Eastern time) on the date such Notice of Loan is received. On the date that the Credit Event set forth in such Notice of Loan is to occur, each Lender shall provide to Collateral Agent, not later than 1:00 P.M. (Eastern time), the amount in Dollars, in federal or other immediately available funds, required of it. If Collateral Agent shall elect to advance the proceeds of such Loan prior to receiving funds from such Lender, Collateral Agent shall have the right, upon prior notice to Borrower, to debit any account of Borrower or otherwise receive such amount from Borrower on demand, in the event that such Lender shall fail to reimburse Collateral Agent in accordance with this subsection. Collateral Agent shall also have the right to receive interest from such Lender at the Federal Funds Effective Rate in the event that such Lender shall fail to provide its portion of the Loan on the date requested and Collateral Agent shall elect to provide such funds.

Section 2.8 Payment on Loans and Other Obligations.

(a) Payments Generally. Each payment made hereunder by a Credit Party shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever.

(b) Payments from Borrower and any Guarantor. All payments (including prepayments) to Collateral Agent of the principal of or interest on each Loan or other payment, including but not limited to principal, interest, fees or any other amount owed by Borrower or any Guarantor under this Agreement, shall be made in Dollars. All payments described in this subsection (b) shall be remitted to Collateral Agent, at the address of Collateral Agent for notices referred to in Section 11.4 hereof for the account of the Lenders not later than 11:00 A.M. (Eastern time) on the due date thereof in immediately available funds. Any such payments received by Collateral Agent after 11:00 A.M. (Eastern time) shall be deemed to have been made and received on the next Business Day.

(c) Payments to Lenders. Upon Collateral Agent's receipt of payments hereunder, Collateral Agent shall immediately distribute to the Lenders their respective ratable shares, if any, of the amount of principal, interest, and commitment and other fees received by Collateral Agent for the account of such Lender. Payments received by Collateral Agent shall be delivered to the Lenders in Dollars in immediately available funds. Each Lender shall record any principal, interest or other payment, the principal amounts of Base Rate Loans, all prepayments and the applicable dates with respect to the Loans made, and payments received by such Lender, by such method as such Lender may generally employ; provided, however, that failure to make any such entry shall in no way detract from the obligations of Borrower under this Agreement or any Note. The aggregate unpaid amount of Loans and similar information with respect to the Loans set forth on the records of Agent shall be rebuttably presumptive evidence with respect to such information, including the amounts of principal, interest and fees owing to each Lender.

(d) Timing of Payments. Whenever any payment to be made hereunder, including, without limitation, any payment to be made on any Loan, shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next Business Day and such extension of time shall in each case be included in the computation of the interest payable on such Loan.

Section 2.9 Prepayment.

(a) Right to Prepay. Borrower shall have the right at any time or from time to time to prepay, on a pro rata basis for all of the Lenders, all or any part of the principal amount of the Loans with the proceeds of such prepayment to be distributed on a pro rata basis to the Lenders. Such payment shall include interest accrued on the amount so prepaid to the date of such prepayment and any amount payable under Article III hereof with respect to the amount being prepaid. Prepayments of Base Rate Loans shall be without any premium or penalty.

(b) Notice of Prepayment. Borrower shall give Collateral Agent notice of prepayment of a Base Rate Loan by no later than 11:00 A.M. (Eastern time) on the Business Day on which such prepayment is to be made.

Section 2.10 Commitment and Other Fees Reduction of Commitment

(a) Commitment Fees. Borrower shall pay to Collateral Agent, for the ratable account of the Lenders, as a consideration for the Commitment, a commitment fee equal to $25,000.00 on the date of entry of the Interim Order.

(b) [Reserved]

(c) [Reserved]

(d) Optional Reduction of Term Commitment. Borrower may, at any time and from time to time, permanently reduce in whole or ratably in part the Total Commitment to an amount not less than the then existing Term Credit Exposure, by giving Collateral Agent not fewer than five (5) Business Days' (or thirty (30) days if the Total Commitment is to be reduced or terminated in its entirety) written notice of such reduction. Collateral Agent shall promptly notify each Lender of the date of each such reduction and such Lender's proportionate share thereof If Borrower reduces in whole the Total Commitment, on the effective date of such reduction (Borrower having prepaid in full the unpaid principal balance, if any, of the Loans, together with all interest (if any), and commitment and other fees accrued and unpaid with respect thereto, all of the Term Notes shall be delivered to Collateral Agent marked "Canceled" and Collateral Agent shall redeliver such Term Notes to Borrower. Any partial reduction in the Total Commitment shall be effective during the remainder of the Commitment Period.

Section 2.11 Computation of Interest and Fees. Interest on Loans, Related Expenses, and commitment and other fees and charges hereunder shall be computed on the basis of a year having three hundred sixty (360) days and calculated for the actual number of days elapsed.

Section 2.12 Mandatory Prepayments and Repayment.

(a) Mandatory Prepayments. Borrower shall make mandatory prepayments (each a "Mandatory Prepayment") in accordance with the following provisions:

(i) Disposition of the Assets. On the first Business Day after receipt by the Borrower or any Guarantor of proceeds from any sale or other disposition of any assets by Borrower or any Guarantor to any Person other than in the ordinary course of business, Borrower shall make a Mandatory Prepayment in an amount equal to one hundred percent (100%) of the net cash proceeds of such sale or other disposition.

(ii) Material Recovery Event. On the first Business Day after receipt by Borrower of any proceeds from a Material Recovery Event, Borrower shall make a Mandatory Prepayment in an amount equal to one hundred percent (100%) of such proceeds (net of reasonable costs and taxes incurred in connection with such Material Recovery Event).

(iii) Tax Refund. On the first Business Day after receipt by Borrower or any Guarantor of any tax refund, Borrower or such Guarantor, as applicable, shall make a Mandatory Prepayment in an amount equal to one hundred percent (100%) of such tax refund.

(b) Repayment. The Term Loans shall become due and payable in full, and Borrower shall repay the Term Loans in full, on the Maturity Date, together with any and all accrued and unpaid interest thereon, and any fees and other Obligations due and payable hereunder.

(c) Application of Mandatory Prepayments. Mandatory Prepayments under this Section 2.12 shall be paid by Borrower to Collateral Agent to be applied to the following: (i) first, to the then outstanding balance of the Term Loans, with a corresponding permanent reduction of the Total Commitment in the amount of such payment; and (ii) second, held as cash collateral in accordance with Section 8.6.

Section 2.13 Liability of Borrower and the Guarantors. Borrower and/or any Guarantor acknowledges and agrees that the Lender is entering into this Agreement at the request of Borrower and/or any Guarantor and with the understanding that Borrower and/or any Guarantor is and shall remain fully liable for payment in full of the Obligations. Borrower and/or any Guarantor agrees that it is receiving or will receive a direct pecuniary benefit for each Loan made hereunder.

ARTICLE III. ADDITIONAL PROVISIONS RELATING TO INCREASED CAPITAL; TAXES.

Section 3.1 Requirements of Law.

(a) If, after the Closing Date, (i) the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by a Governmental Authority, or (ii) the compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority:

(A) shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement or change the basis of taxation of payments to such Lender in respect thereof (except for Taxes and Excluded Taxes which are governed by Section 3.2 hereof);

(B) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender; or

(C) shall impose on such Lender any other condition; and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining Loans, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, Borrower shall pay to such Lender, promptly after receipt of a written request therefor (which shall include the method for calculating such amount), any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this subsection (a), such Lender shall promptly notify Borrower (with a copy to Collateral Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that, after the Closing Date, the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof by a Governmental Authority or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder, to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration the policies of such Lender or corporation with respect to capital adequacy), then from time to time, upon submission by such Lender to Borrower (with a copy to Collateral Agent) of a written request therefor (which shall include the method for calculating such amount), Borrower shall promptly pay or cause to be paid to such Lender such additional amount or amounts as will compensate such Lender for such reduction.

(c) A certificate as to any additional amounts payable pursuant to this Section 3.1 submitted by any Lender to Borrower (with a copy to Collateral Agent) shall be conclusive absent manifest error. In determining any such additional amounts, such Lender may use any method of averaging and attribution that it (in its commercially reasonable discretion) shall deem applicable. The obligations of Borrower pursuant to this Section 3.1 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 3.2 Taxes.

(a) All payments made by any Credit Party under any Loan Document shall be made free and clear of, and without deduction or withholding for or on account of any Taxes or Other Taxes. If any Taxes or Other Taxes are required to be deducted or withheld from any amounts payable to any Lender hereunder, the amounts so payable to such Lender shall be increased to the extent necessary to yield to such Lender (after deducting, withholding and payment of all Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in the Loan Documents.

(b) Whenever any Taxes or Other Taxes are required to be withheld and paid by a Credit Party, such Credit Party shall timely withhold and pay such taxes to the relevant Governmental Authorities. As promptly as possible thereafter, Borrower shall send to Collateral Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt received by such Credit Party showing payment thereof or other evidence of payment reasonably acceptable to Collateral Agent or such Lender. If such Credit Party shall fail to pay any Taxes or Other Taxes when due to the appropriate Goves, interest or penalties that may become payable by Collateralrnmental Authority or fails to remit to Collateral Agent the required receipts or other required documentary evidence, such Credit Party and Borrower shall indemnify Collateral Agent and the appropriate Lenders on demand for any incremental taxes, interest or penalties that may become payable by Collateral Agent or such Lender as a result of any such failure.

(c) If any Lender shall be so indemnified by a Credit Party, such Lender shall use reasonable efforts to obtain the benefits of any refund, deduction or credit for any taxes or other amounts with respect to the amount paid by such Credit Party and shall reimburse such Credit Party to the extent, but only to the extent, that such Lender shall receive a refund with respect to the amount paid by such Credit Party or an effective net reduction in taxes or other governmental charges (including any taxes imposed on or measured by the total net income of such Lender) of the United States or any state or subdivision or any other Governmental Authority thereof by virtue of any such deduction or credit, after first giving effect to all other deductions and credits otherwise available to such Lender. If, at the time any audit of such Lender's income tax return is completed, such Lender determines, based on such audit, that it shall not have been entitled to the full amount of any refund reimbursed to such Credit Party as aforesaid or that its net income taxes shall not have been reduced by a credit or deduction for the full amount reimbursed to such Credit Party as aforesaid, such Credit Party, upon request of such Lender, shall promptly pay to such Lender the amount so refunded to which such Lender shall not have been so entitled, or the amount by which the net income taxes of such Lender shall not have been so reduced, as the case maybe.

(d) Each Lender that is not: (i) a citizen or resident of the United States of America; (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States of America (or any jurisdiction thereof); or (iii) an estate or trust that is subject to federal income taxation regardless of the source of its income (any such Person, a "Non-U.S. Lender") shall deliver to Borrower and Collateral Agent two copies of either U.S. Internal Revenue Service Form W-8BEN or Form W-8ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a statement with respect to such interest and a Form W-8BEN, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by Credit Parties under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement or such other Loan Document. In addition, each Non-U.S. Lender shall deliver such forms or appropriate replacements promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify Borrower at any time it determines that such Lender is no longer in a position to provide any previously delivered certificate to Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this subsection (d), a Non-U.S. Lender shall not be required to deliver any form pursuant to this subsection (d) that such Non-U.S. Lender is not legally able to deliver.

(e) The agreements in this Section 3.2 shall survive the termination of the Loan Documents and the payment of the Loans and all other amounts payable hereunder.

ARTICLE IV. CONDITIONS PRECEDENT

Section 4.1 Conditions to Each Credit Event. The obligation of the Lenders to participate in any Credit Event shall be conditioned, in the case of each Credit Event, upon the following:

(a) all conditions precedent as listed in Section 4.2 hereof required to be satisfied prior to the first Credit Event shall have been satisfied prior to or as of the first Credit Event;

(b) Borrower shall have submitted a Notice of Loan and otherwise complied with Section 2.7 hereof;

(c) no Default or Event of Default shall then exist or immediately after such Credit Event would exist; and

(d) each of the representations and warranties contained in Article VI hereof shall be true in all material respects as if made on and as of the date of such Credit Event, except to the extent that any thereof expressly relate to an earlier date.

Each request by Borrower for a Credit Event shall be deemed to be a representation and warranty by Borrower as of the date of such request as to the satisfaction of the conditions precedent specified in subsections (c) and (d) above.

Section 4.2 Conditions to the First Credit Event. Borrower shall cause the following conditions to be satisfied on or prior to the Closing Date. The obligation of the Lenders to participate in the first Credit Event is subject to Borrower satisfying each of the following conditions prior to or concurrently with such Credit Event:

(a) Commencement of the Case. The Case of the Borrower shall have commenced on or before October 15, 2015.

(b) Entry of Interim Order. The Case shall have commenced and the Bankruptcy Court shall have entered the Interim Order, such Interim Order shall be in full force and effect and shall not have been amended, modified, stayed or reversed.

(c) Notes as Requested; Agreement. Borrower shall have executed and delivered to each Lender requesting a Term Note such Lender's Term Note. Borrower and each Guarantor shall have executed and delivered to Collateral Agent this Agreement in sufficient counterparts for each Lender and Collateral Agent.

(d) Security Agreements. Borrower and each Guarantor shall have executed and delivered to Collateral Agent a Security Agreement and such other documents or instruments, as may be required by Collateral Agent to create or perfect the Liens of Collateral Agent in the assets of Borrower and the Guarantors, all to be in form and substance satisfactory to Collateral Agent.

(e) Officer's Certificate, Resolutions, Organizational Documents. Borrower and each Guarantor shall have delivered to Collateral Agent an officer's certificate certifying the names of the officers of Borrower/Guarantor (as applicable) authorized to sign the Loan Documents, together with the true signatures of such officers and certified copies of (i) the resolutions of the board of directors of Borrower/Guarantor evidencing approval of the execution and delivery of the Loan Documents and the execution of other Related Writings to which Borrower/Guarantor is a party, and (ii) the Organizational Documents of Borrower/Guarantor.

(f) Good Standing and Full Force and Effect Certificates. Borrower and each Guarantor shall have delivered to Collateral Agent a good standing certificate or full force and effect certificate, as the case may be, issued on or about the Closing Date by the Secretary of State in the state where Borrower and any Guarantor is incorporated or qualified to do business.

(g) Closing Fee. Borrower shall have paid to Collateral Agent, for the benefit of the Lenders, the Commitment Fees set forth in Section 2.10(a) of this Agreement.

(h) Insurance Certificate. Borrower shall have delivered to Collateral Agent evidence of insurance on ACORD 25 and 27 or 28 form, and otherwise satisfactory to Collateral Agent, of adequate real property, personal property and liability insurance of Borrower, with Collateral Agent, listed as mortgagee loss payee and additional insured. Each Guarantor shall have delivered to Collateral Agent evidence of insurance on ACORD 25 and 27 or 28 form, and otherwise satisfactory to Collateral Agent, of adequate real property, personal property and liability insurance of such Guarantor with Collateral Agent, listed as mortgagee loss payee and additional insured.

(i) Initial Budget. Borrower shall have prepared and delivered to Collateral Agent and the Lender the initial Budget and Collateral Agent shall have approved the initial Budget, in its discretion.

(j) Closing Certificate. Borrower shall have delivered to Collateral Agent an officer's certificate certifying that, as of the Closing Date: (i) all conditions precedent set forth in this Article IV have been satisfied; (ii) no Default or Event of Default exists nor immediately after the first Credit Event will exist; and (iii) each of the representations and warranties contained in Article VI hereof are true and correct as of the Closing Date.

(k) Collateral Matters.

(i) Collateral Agent shall have received evidence that the completion of all recordings and filings necessary or, in the reasonable opinion of Collateral Agent, desirable to perfect and protect the security interests purported to be created by this Agreement and the other Security Documents have been taken;

(ii) Collateral Agent shall have in its possession all of the Pledged Notes which shall be either endorsed in blank;

(iii) Collateral Agent shall have received evidence that all other actions necessary or, in the reasonable opinion of Collateral Agent, desirable to perfect and protect the first priority Lien in the Collateral, subject only to Permitted Liens, have been taken, or arrangements therefor have been made on a basis satisfactory to Collateral Agent and shall be in place

(l) First Day Orders. The Bankruptcy Court shall have entered the First Day Orders, in form and substance acceptable to Collateral Agent.

(m) Prepetition Interest, Fees and Expenses. The Prepetition Lenders shall have received payment of all fees and expenses incurred and accrued and unpaid interest due and payable under the Prepetition Loan Documents to the extent authorized by the Bankruptcy Court or in any order entered by the Bankruptcy Court.

(n) Control Agreements. Collateral Agent shall have received Control Agreements with respect to each of the bank accounts listed on Schedule 6.19 hereto.

(o) Plan and Timetable. Collateral Agent shall have received a specific plan and timetable for effecting the reorganization of the businesses and assets of the Borrower and Guarantors, in form and substance satisfactory to Collateral Agent and the Required Lenders, which shall include, without limitation, the following milestones:

(i) Borrower shall file with the Bankruptcy Court, on or before December 15, 2015 at 5:00 p.m. (Eastern time), a plan disclosure statement for a plan of reorganization and a plan of reorganization;

(ii) Borrower shall obtain from the Bankruptcy Court, on or before January 18, 2016 at 5:00 p.m. (Eastern time), a confirmation hearing to approve the proposed plan of reorganization;

(iii) Borrower shall obtain, on or before January 22, 2016 at 5:00 p.m. (Eastern), an order from the Bankruptcy Court approving and confirming the proposed plan of reorganization; and

(iv) The plan of reorganization effective date shall occur on or before January 31, 2016.

(p) Miscellaneous. Borrower shall have provided to Collateral Agent and the Lenders such other items and shall have satisfied such other conditions as may be reasonably required by Collateral Agent or the Lenders.

ARTICLE V. COVENANTS

Section 5.1 Insurance. Borrower and any Guarantor shall at all times maintain insurance upon its Inventory, Equipment and other personal and real property in such form, written by such companies, in such amounts, for such periods, and against such risks as may be acceptable to Collateral Agent, in its commercially reasonable discretion, with provisions satisfactory to Collateral Agent for payment of all losses thereunder to Collateral Agent and Borrower and/or Guarantor as their interests may appear (loss payable endorsement in favor of Collateral Agent), and, if required by Collateral Agent, Borrower and any Guarantor shall deposit the policies with Collateral Agent. Any such policies of insurance shall provide for no fewer than thirty (30) days prior written notice of cancellation to Collateral Agent. Any sums received by Collateral Agent in payment of insurance losses, returns, or unearned premiums under the policies shall be applied as set forth in Section 2.12(c) hereof. Collateral Agent is hereby authorized to act as attorney-in-fact for Borrower and any Guarantor in obtaining, adjusting, settling and canceling such insurance and indorsing any drafts. In the event of failure to provide such insurance as herein provided, Collateral Agent may, at its option, provide such insurance and Borrower shall pay to Collateral Agent, upon demand, the cost thereof. Should Borrower fail to pay such sum to Collateral Agent upon demand, interest shall accrue thereon, from the date of demand until paid in full, at the Default Rate. Within ten (10) days of Collateral Agent's written request, Borrower and/or any Guarantor shall furnish to Collateral Agent such information about the insurance of the Borrower and/or Guarantor as Collateral Agent may from time to time reasonably request, which information shall be prepared in form and detail reasonably satisfactory to Collateral Agent and certified by a Financial Officer.

Section 5.2 Retention of Consultant; Commercial Financial Audits and Appraisals.

(a) The Borrower agrees that any consultant retained by Collateral Agent's counsel, McDonald Hopkins, LLC or any other Person (the "Consultant"), selected by McDonald Hopkins, LLC, as a consultant, may, among other things, make visits to, and discuss financial and operational matters with, Borrower and/or any Guarantor. Such Consultant shall not be limited in the frequency of visits to the facilities of Borrower and any Guarantor, subject to reasonable notice and accommodation of the operating needs of Borrower and such Guarantor. Borrower and any Guarantor shall cooperator with such Consultant and provide such Consultant with all information reasonably requested by such Consultant in connection with its engagement by McDonald Hopkins, LLC.

(b) Upon the request of Collateral Agent, Borrower and any Guarantor will obtain and deliver to Collateral Agent, or, if Collateral Agent so elects, will cooperate with Collateral Agent in Collateral Agent's obtaining, a report of an independent collateral auditor satisfactory to Collateral Agent (which collateral auditor may be affiliated with Collateral Agent) with respect to the Collateral. All such reports shall be conducted and made at the expense of Borrower.

(c) Upon the request of Collateral Agent, Borrower and any Guarantor will obtain and deliver to Collateral Agent, or, if Collateral Agent so elects, will cooperate with Collateral Agent in Collateral Agent's obtaining, a report of an appraiser or appraisers satisfactory to Collateral Agent (which appraiser or appraisers may be affiliated with Collateral Agent) with respect to the other assets of any Credit Party. All such appraisals shall be conducted and made at the expense of Borrower.

Section 5.3 Financial Statements and Information.

(a) Monthly Financials. Borrower shall deliver to Collateral Agent, within thirty (30) days after the end of each calendar month a consolidated balance sheet of Borrower and any Guarantor as to the end of each such month and a statement of income (including a statement of revenues and expenses for each of Borrower's and any Guarantor's business segments and corporate charges) and cash flows for such month and for the period from the beginning of the fiscal year to the end of such month, prepared in accordance with GAAP, in form and detail satisfactory to Collateral Agent, certified by a Financial Officer, subject to audit, footnotes, and normal year-end adjustments, and accompanied by a Financial Officer's certificate to the effect that there exits no Default or Event of Default, or if any Default or Event of Default exists, specifying the nature thereof, the period of existence thereof, and what action the Borrower proposes to take with respect thereto.

(b) Annual Audit Report. Borrower and each Guarantor shall deliver to Collateral Agent, within one hundred-twenty (120) days after the end of each fiscal year of such Borrower or Guarantor, (i) an annual audit report of Borrower/Guarantor, as applicable, for that year prepared in accordance with GAAP, in form and detail satisfactory to Collateral Agent and certified by an opinion of an independent public accountant satisfactory to Collateral Agent that shall not be qualified except with respect to uncertainties inherent in the Case resulting in substantial doubt about Borrower's or any Guarantor's ability to continue as a going concern, which report shall include balance sheets and statements of income (loss), stockholders' equity and cash flows for that period, and (ii) unaudited schedules to the annual audit report prepared in accordance with GAAP, and in form and detail satisfactory to Collateral Agent.

(c) Compliance Certificate. Borrower shall deliver to Collateral Agent, concurrently with the delivery of the financial statements set forth in subsections (a) and (b) above, a Compliance Certificate.

(d) Management Report. Borrower shall deliver to Collateral Agent, concurrently with the delivery of the quarterly and annual financial statements set forth in subsections (a) and (b) above, a copy of any management report, letter or similar writing furnished to the Borrower by the accountants in respect of the Borrower's systems, operations, financial condition or properties.

(e) Reports; Filings in the Case. Borrower shall deliver to Collateral Agent concurrently with:

(i) the filing thereof, copies of all pleadings, motions, applications, information and other papers and documents of any kind filed by or on behalf of the Debtors in the Case;

(ii) the giving thereof, copies of all written reports given by or on behalf of the Debtors to any Statutory Committee; and

(iii) the giving thereof, copies of all written reports, including without limitation, the monthly report of operations, to the United States Trustee.

(f) pdated Budget. Before 5:00 p.m. (Eastern time) on Wednesday of each week, Borrower shall deliver to Collateral Agent (i) an updated Budget reflecting sales, receipts, disbursements and the amounts of Loans of Borrower for the immediately preceding calendar week and the following consecutive thirteen (13) calendar weeks, substantially in the form of Annex 1 hereto, which updated Budget shall be in form and substance satisfactory to Collateral Agent and (ii) before 5:00 p.m. (Eastern time) on Wednesday of each week, a report, certified by a Financial Officer, of the actual performance during the prior calendar week: (i) itemizing and cumulatively totaling all post-Filing Date receipts and disbursements of Borrower and any Guarantor for the previous calendar week (i.e. Sunday through Saturday) and actual Loans obtained under this Agreement; (ii) setting forth a comparison of the actual performance (including with respect to sales and collections) for such prior week against the forecast set forth in the Budget for such week; (iii) setting forth a comparison of the actual performance (including with respect to sales and collections) for the period beginning on the Filing Date through the previous calendar week against the cumulative forecast set forth in the Budget for such period; and (iv) itemizing expenses incurred but not paid (and the terms thereof) during the previous calendar week, which report shall be in form and substance satisfactory to Collateral Agent.

(g) Notice of Litigation. Promptly, and in any event within three (3) Business Days after Borrower obtains knowledge thereof, Borrower shall provide notice to Collateral Agent of the commencement of or any significant development in the Case or any other litigation or governmental proceeding pending against Borrower and/or any Guarantor which involves an amount in excess of $25,000, or would be reasonably likely to have a Material Adverse Effect.

(h) Claims Against Collateral. Immediately upon becoming aware thereof, Borrower shall notify Collateral Agent of any notices in writing of any setoffs, claims, withholdings or other defenses to which any of the Collateral, or any of Collateral Agent's or Lenders' rights with respect to the Collateral, are subject.

Financial Information of Borrower. Borrower shall deliver to Collateral Agent, within five (5) days of the written request of Collateral Agent or any Lender, such other information about the financial condition, properties and operations of Borrower as Collateral Agent or such Lender may from time to time reasonably request, which information shall be submitted in form and detail reasonably satisfactory to Collateral Agent or such Lender and certified by a Financial Officer of the Borrower.

Section 5.4 Financial Records. Borrower and any Guarantor shall: (a) at all times maintain true and complete records and books of account, including, without limiting the generality of the foregoing, prepare authentic invoices for all of the Accounts and appropriate provisions for possible losses and liabilities, all in accordance with GAAP; (b) render to Collateral Agent, forthwith upon each request of Collateral Agent or any Lender, such financial statements of Borrower's and/or Guarantor's financial condition and operations, including but not limited to Borrower's and/or Guarantor's tax returns, and such reports of the Accounts, as Collateral Agent or any Lender may from time to time request; (c) give Collateral Agent prompt written notice whenever any Account Debtor shall become in default in any manner or assert any defense or offset and whenever any other event, omission, condition or thing having a material adverse effect on any Account shall occur or arise; (d) forward to Collateral Agent, upon request of Collateral Agent or any Lender, whenever made, (i) invoices, sales journals or other documents satisfactory to Collateral Agent or such Lender, as the case may be, that summarize the Accounts, certified by an officer of Borrower and/or Guarantor, (ii) within the time specified by Collateral Agent, an aging report of the Accounts then outstanding setting forth, in such form and detail and with such representations and warranties as Collateral Agent or such Lender may from time to time reasonably require, the unpaid balances of all invoices billed respectively during that period and during each of the three next preceding periods, and certified by an officer of Borrower and/or Guarantor, and (iii) with respect to the Inventory and any other Collateral, such reports and other documents that are satisfactory to Collateral Agent and the Lenders; and (e) at all reasonable times (during normal business hours and upon notice to Borrower and/or Guarantor, as applicable) permit Collateral Agent or any Lender, or any representative of Collateral Agent or such Lender, to examine Borrower's and/or Guarantor's books and records and to make excerpts therefrom and transcripts thereof.

Section 5.5 Franchises; Change in Business.

(a) Borrower and each Guarantor shall preserve and maintain at all times its existence, and its rights and franchises, if any, necessary for its business, except as otherwise permitted pursuant to Section 5.12 hereof

(b) Borrower and each Guarantor shall not engage in any business if, as a result thereof, the general nature of the business of the Borrower or such Guarantor taken as a whole would be substantially changed from the general nature of the business the Borrower or such Guarantor is engaged in on the Closing Date.

Section 5.6 ERISA Pension and Benefit Plan Compliance. Borrower shall not incur any material accumulated funding deficiency within the meaning of ERISA, or any material liability to the PBGC, established thereunder in connection with any ERISA Plan. Borrower shall furnish to the Collateral Agent (a) as soon as possible and in any event within thirty (30) days after Borrower knows or has reason to know that any Reportable Event with respect to any ERISA Plan has occurred, a statement of a Financial Officer of Borrower setting forth details as to such Reportable Event and the action that Borrower proposes to take with respect thereto, together with a copy of the notice of such Reportable Event given to the PBGC if a copy of such notice is available to Borrower, and (b) promptly after receipt thereof a copy of any notice Borrower, or any member of a Controlled Group may receive from the PBGC or the Internal Revenue Service with respect to any ERISA Plan administered by Borrower; provided that this latter clause shall not apply to notices of general application promulgated by the PBGC or the Internal Revenue Service. Borrower shall promptly notify Collateral Agent of any material taxes assessed, proposed to be assessed or that Borrower has reason to believe may be assessed against Borrower by the Internal Revenue Service with respect to any ERISA Plan. As used in this Section 5.6 “material” means the measure of a matter of significance that shall be determined as being an amount equal to five percent (5%) of Net Worth. As soon as practicable, and in any event within twenty (20) days, after Borrower shall become aware that an ERISA Event shall have occurred, Borrower shall provide Collateral Agent with notice of such ERISA Event with a certificate by a Financial Officer of Borrower setting forth the details of the event and the action Borrower or another Controlled Group member proposes to take with respect thereto. Borrower shall, at the request of Collateral Agent, deliver or cause to be delivered to Collateral Agent true and correct copies of any documents relating to the ERISA Plan of Borrower.

Section 5.7 [Reserved]

Section 5.8 Borrowing. Borrower shall not create, incur or have outstanding any Indebtedness of any kind; provided that this Section 5.8 shall not apply to the following:

(a) the Loans and any other Indebtedness under this Agreement; and

(b) Indebtedness existing as of the Filing Date (“Existing Indebtedness”), without giving effect to any subsequent extension, renewal or refinancing thereof

Section 5.9 Liens. Borrower and each Guarantor shall not create, assume or suffer to exist (upon the happening of a contingency or otherwise) any Lien upon any of its property or assets, whether now owned or hereafter acquired; provided that this Section 5.9 shall not apply to the following (each, a "Permitted Lien"):

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

(b) other statutory Liens or Liens of carriers, customs brokers and warehousemen or shippers incidental to the conduct of its business or the ownership of its property and assets that (i) were not incurred in connection with the borrowing of money or the obtaining of advances or credit, and (ii) do not in the aggregate materially detract from the value of its property or assets or materially impair the use thereof in the operation of its business;

(c) Liens on property or assets of a Subsidiary, if any, to secure obligations of such Subsidiary to a Credit Party in existence on the Filing Date;

(d) any Lien granted to Collateral Agent or any Lender pursuant to this Agreement, the other Loan Documents or the Orders;

(e) the Prepetition Liens and the Other Prepetition Liens; or

(f) easements or other minor defects or irregularities in title of real property not interfering in any material respect with the use of such property in the business of Borrower or any Guarantor.

Borrower and any Guarantor shall not enter into any contract or agreement (other than a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets) that would prohibit Collateral Agent or the Lenders from acquiring a security interest, mortgage or other Lien on, or a collateral assignment of, any of the property or assets of Borrower and/or any Guarantor.

Nothing contained in this Section 5.9 subordinates the Liens in favor of Collateral Agent or the Lenders under the Loan Documents to any Permitted Lien that is not valid, perfected and entitled to priority over Collateral Agent's or the Lenders' Liens under applicable law or that is avoidable under the Bankruptcy Code.

Section 5.10 Regulations T, U and X. Borrower shall not take any action that would result in any non-compliance of the Loans or Letters of Credit with Regulations T, U or X, or any other applicable regulation, of the Board of Governors of the Federal Reserve System.

Section 5.11 Investments, Loans and Guaranties. Borrower shall not: (a) create, acquire or hold any Subsidiary; (b) make or hold any investment in any stocks, bonds or securities of any kind; (c) be or become a party to any joint venture or other partnership; (d) make or keep outstanding any advance or loan to any Person; or (e) be or become a Guarantor of any kind (other than a Guarantor of Payment under the Prepetition Loan Documents); provided that this Section 5.11 shall not apply to the following:

(i) any endorsement of a check or other medium of payment for deposit or collection through normal banking channels or similar transaction in the normal course of business; or

(ii) any investment in direct obligations of the United States of America or in certificates of deposit issued by a member bank (having capital resources in excess of One Hundred Million Dollars ($100,000,000)) of the Federal Reserve System.

For purposes of this Section 5.11, the amount of any investment in equity interests shall be based upon the initial amount invested and shall not include any appreciation in value or return on such investment but shall take into account repayments, redemptions and return of capital.

Section 5.12 Merger and Sale of Assets. Borrower and/or any Guarantor shall not merge, amalgamate or consolidate with any other Person, or sell, lease or transfer or otherwise dispose of any assets to any Person other than in the ordinary course of business consistent with past practices or as agreed by Collateral Agent and the Required Lenders.

Section 5.13 Acquisitions. No Company shall effect an Acquisition without the prior written consent of the Required Lenders.

Section 5.14 Notice.

(a) Borrower shall cause a Financial Officer of Borrower to promptly notify Collateral Agent and the Lenders, in writing, whenever a Default or Event of Default may occur hereunder or any representation or warranty made in Article VI hereof or elsewhere in this Agreement or in any Related Writing may for any reason cease in any material respect to be true and complete.

(b) Promptly upon becoming aware thereof, Borrower will give Collateral Agent and the Lenders written notice about any condition or event that Borrower determines has or is reasonably likely to have a Material Adverse Effect.

(c) Borrower shall give Collateral Agent prompt written notice if the Internal Revenue Service shall allege the nonpayment or underpayment of any tax by Borrower or threaten to make any assessment in respect thereof.

Section 5.15 Restricted Payments. Borrower shall not make or commit itself to make any Restricted Payment.

Section 5.16 Environmental Compliance. Borrower and/or any Guarantor shall comply in all material respects with any and all Environmental Laws including, without limitation, all Environmental Laws in jurisdictions in which Borrower and/or Guarantor owns or operates a facility or site, arranges for disposal or treatment of hazardous substances, solid waste or other wastes, accepts for transport any hazardous substances, solid waste or other wastes or holds any interest in real property or otherwise. Borrower shall furnish to Collateral Agent and the Lenders, promptly after receipt thereof, a copy of any notice Borrower or any Guarantor may receive from any Governmental Authority or private Person or otherwise that any material litigation or proceeding pertaining to any environmental, health or safety matter has been filed or is threatened against Borrower or any Guarantor, any real property in which Borrower or a Guarantor holds any interest or any past or present operation of Borrower or any Guarantor. Borrower and/or any Guarantor shall not allow the release or disposal of hazardous waste, solid waste or other wastes on, under or to any real property in which Borrower and/or any Guarantor holds any ownership interest or performs any of its operations, in violation of any Environmental Law. As used in this Section 5.16, “litigation or proceeding” means any demand, claim, notice, suit, suit in equity action, administrative action, investigation or inquiry whether brought by any Governmental Authority or private Person or otherwise. Borrower and any Guarantor shall defend, indemnify and hold Collateral Agent and the Lenders harmless against all costs, expenses, claims, damages, penalties and liabilities of every kind or nature whatsoever (including attorneys’ fees) arising out of or resulting from the noncompliance of Borrower and/or any Guarantor with any Environmental Law. Such indemnification shall survive any termination of this Agreement.

Section 5.17 Affiliate Transactions. Borrower shall, directly or indirectly, enter into or permit to exist any transaction (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate (other than a Credit Party) on terms that shall be less favorable to Borrower than those that might be obtained at the time in a transaction with a non-Affiliate.

Section 5.18 Use of Proceeds.

(a) Use of Proceeds. The proceeds of all Term Loans may be used for the general corporate and working capital purposes of Borrower and Guarantors solely in accordance with the then current Budget.

(b) Other Uses. Notwithstanding anything to the contrary contained in this Agreement, none of the: (i) Carve Out; (ii) prepetition or postpetition collateral proceeds; or (iii) proceeds of the Term Loans shall be used to object to or challenge in any way, any claims, Liens or cash collateral held by or on behalf of the Prepetition Lenders; provided that the above identified amounts may be used by the Creditors' Committee to investigate (X) the validity, enforceability, perfection or priority of the Prepetition Liens and the Prepetition Collateral securing the Prepetition Obligations or (Y) the validity, priority, status or amount of the Prepetition Obligations, in each case within the time period established by the Bankruptcy Court and set forth in the Final Order; provided, further, however, that the aggregate amount of such expenses incurred by the Creditors' Committee for any such investigation herein shall not exceed Ten Thousand Dollars ($10,000). Nothing in this Agreement shall prevent Collateral Agent or any Lender from objecting to any fees and expenses in the Case.

Section 5.19 Corporate Names and Locations of Collateral. Borrower and each Guarantor shall not change its corporate name, unless, in each case, Borrower shall provide Collateral Agent and the Lenders with at least thirty (30) days prior written notice thereof. Borrower shall promptly notify Collateral Agent of: (a) any change in any location where Borrower's and/or any Guarantor's Inventory or Equipment is maintained, and any new locations where Borrower's and/or any Guarantor's Inventory or Equipment is to be maintained; (b) any change in the location of the office where Borrower's and/or any Guarantor's records pertaining to its Accounts are kept; (c) the location of any new places of business and the changing or closing of any of its existing places of business; and (d) any change in Borrower's and/or any Guarantor's chief executive office. In the event of any of the foregoing or if deemed appropriate by Collateral Agent, Agent is hereby authorized to file new U.C.C. Financing Statements describing the Collateral and otherwise in form and substance sufficient for recordation wherever necessary or appropriate, as determined in Collateral Agent's sole discretion, to perfect or continue perfected the security interest of Collateral Agent in the Collateral. Borrower shall pay all filing and recording fees and taxes in connection with the filing or recordation of such U.C.C. Financing Statements and shall promptly reimburse Collateral Agent therefor if Collateral Agent pays the same. Such amounts shall be Related Expenses hereunder.

Section 5.20 Limitation on Creation of Subsidiary. Borrower and/or any Guarantor shall not establish, create or acquire any new or additional Subsidiaries.

Section 5.21 Property Acquired Subsequent to the Closing Date and Right to Take Additional Collateral . Borrower shall provide Collateral Agent with prompt written notice with respect to any real or personal property (other than Accounts, Inventory, Equipment and General Intangibles and other property acquired in the ordinary course of business) acquired by Borrower and/or any Guarantor subsequent to the Closing Date. In addition to any other right Collateral Agent and the Lenders may have pursuant to this Agreement or otherwise, upon written request of Collateral Agent, whenever made, Borrower and/or such Guarantor shall grant to Collateral Agent as additional security for the Secured Obligations, a first Lien on any real or personal property of Borrower and/or any Guarantor (other than for leased Equipment or Equipment subject to a purchase money security interest in which the lessor or purchase money lender with respect to such Equipment holds a first priority security interest, in which case, Collateral Agent shall have the right to obtain a security interest junior only to such owner), including, without limitation, such property acquired subsequent to the Closing Date, in which Collateral Agent does not have a first priority Lien. Borrower and each Guarantor agrees, within ten (10) days after the date of such written request, to secure all of such Indebtedness by delivering to Collateral Agent security agreements, mortgages (or deeds of trust, if applicable) or other documents, instruments or agreements or such thereof as Collateral Agent may require. Borrower shall pay all recordation, legal and other expenses in connection therewith.

Section 5.22 [Reserved]

Section 5.23 Amendment of Organizational Documents; Prepetition Obligations. Without the prior written consent of Collateral Agent, Borrower and/or any Guarantor shall not amend its Organizational Documents. Borrower and/or any Guarantor shall not amend, modify or change in any manner any agreement relating to any Prepetition Obligation, without the prior written consent of Collateral Agent.

Section 5.24 Collateral. Borrower and Guarantors shall:

(a) at all reasonable times allow Collateral Agent or any Lender by or through any of its officers, agents, employees, attorneys, or accountants to: (i) examine, inspect, and make extracts from the Borrower's and/or any Guarantor's books and other records, including, without limitation, the tax returns of Borrower and/or any Guarantor; (ii) arrange for verification of Borrower's and/or any Guarantor's Accounts, under reasonable procedures, directly with Account Debtors or by other methods; and (iii) examine and inspect Borrower's and/or any Guarantor's Inventory and Equipment, wherever located;

(b) promptly furnish to Collateral Agent or any Lender upon request (i) additional statements and information with respect to the Collateral, and all writings and information relating to or evidencing any of Borrower's and/or any Guarantor's Accounts (including, without limitation, computer printouts or typewritten reports listing the mailing addresses of all present Account Debtors), and (ii) any other writings and information as Collateral Agent or such Lender may reasonably request;

(c) notify Collateral Agent in writing promptly upon the creation of any Accounts with respect to which the Account Debtor is the United States of America or any other Governmental Authority, or any foreign government or instrumentality thereof or any business that is located in a foreign country;

(d) notify Collateral Agent in writing whenever a material amount of the Inventory of Borrower and/or any Guarantor is located at a location of a third party (other than a Company) that is not listed on Schedule 6.9 hereto and cause to be executed any bailee's waiver, processor's waiver or similar document or notice that may be required by Collateral Agent or the Lenders;

(e) immediately notify Collateral Agent and the Lenders in writing of any information that Borrower and/or any Guarantor has or may receive with respect to the Collateral that might in any manner materially and adversely affect the value of the Collateral (taken as a whole) or the rights of Collateral Agent or the Lenders with respect thereto;

(f) maintain Borrower's and/or any Guarantor's equipment in good operating condition and repair, ordinary wear and tear excepted, making all necessary replacements thereof so that the value and operating efficiency thereof shall at all times be maintained and preserved;

(g) deliver to Collateral Agent to hold as security for the Secured Obligations, within ten Business Days upon the written request of Collateral Agent, all certificated investment property owned by a Credit Party, in suitable form for transfer by delivery, or accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to Collateral Agent, or in the event such investment property is in the possession of a securities intermediary or credited to a securities account, execute with the related securities intermediary an investment property control agreement over such securities account in favor of Collateral Agent, in form and substance reasonably satisfactory to Collateral Agent; and

(h) upon request of Collateral Agent, promptly take such action and promptly make, execute, and deliver all such additional and further items, deeds, assurances, instruments and any other writings as Collateral Agent may from time to time deem necessary or appropriate, require, including, without limitation, chattel paper, to carry into effect the intention of this Agreement, or so as to completely vest in and ensure to Collateral Agent and the Lenders their respective rights hereunder and in or to the Collateral and the Real Property.

Borrower and/or any Guarantor hereby authorizes Collateral Agent to file U.C.C. Financing Statements with respect to the Collateral. If certificates of title or applications for title are issued or outstanding with respect to any of the Inventory or Equipment of Borrower and/or any Guarantor, Borrower and/or any Guarantor shall, upon request of Collateral Agent, (i) execute and deliver to Collateral Agent a short form security agreement, in form and substance reasonably satisfactory to Collateral Agent, and (ii) deliver such certificate or application to Collateral Agent and cause the interest of Collateral Agent to be properly noted thereon. Borrower and/or any Guarantor hereby authorizes Collateral Agent, or its respective designated agents (but without obligation by Collateral Agent to do so), to incur Related Expenses (whether prior to, upon, or subsequent to any Default or Event of Default), and Borrower shall promptly repay, reimburse, and indemnify Collateral Agent for any and all Related Expenses. If Borrower and/or any Guarantor fails to keep and maintain its Equipment in good operating condition, ordinary wear and tear excepted, Collateral Agent may (but shall not be required to) so maintain or repair all or any part of Borrower's and/or any Guarantor Equipment and the cost thereof shall be a Related Expense. All Related Expenses are payable to Collateral Agent, as applicable, upon demand therefor; Collateral Agent may, at its option, debit Related Expenses directly to any deposit account of Borrower located at Collateral Agent.

Section 5.25 Further Assurances. Borrower and/or any Guarantor shall, promptly upon request by Collateral Agent, or the Required Lenders through Collateral Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, (b) provide title insurance, appraisals, environmental reports and other due diligence with respect to the real estate as may be required by Collateral Agent, and (c) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as Collateral Agent, or the Required Lenders through Collateral Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

Section 5.26 Communications with Professionals. Borrower and/or any Guarantor authorizes Collateral Agent, Consultant or any of Collateral Agent's representatives and counsel to communicate directly with Borrower's and/or any Guarantor's professionals, including, without limitation, the Borrower's and/or any Guarantor's counsel and other professionals retained by the Borrower and/or any Guarantor, and further authorizes such professionals to disclose to Collateral Agent, Consultant, or Collateral Agent's representatives and counsel, as the case may be, such information as may be reasonably requested by any such Person with respect to the business, financial condition or other affairs of Borrower and/or any Guarantor; provided that Borrower's and/or any Guarantor's professionals shall not be required to disclose privileged or confidential information to the extent that disclosure cannot be made without compromising such information's privileged or confidential status.

Section 5.27 Executory Contracts. Prior to the Debtors rejecting any contract or making any motion to reject any contract, Borrower and/or any Guarantor shall notify Collateral Agent in writing of the Debtors' reasons why such rejection will be in the best interests of the Debtors and will not have a Material Adverse Effect on Borrower and/or any Guarantor.

Section 5.28 Limitation on Creation of Bank Accounts. [Reserved.]

Section 5.29 Bankruptcy Case. Borrower and/or any Guarantor will not: (a) seek, consent or suffer to exist any modification, stay, vacation or amendment to the Orders, unless Collateral Agent has consented to such modification, stay, vacation or amendment in writing; (b) seek or consent to nor shall the Bankruptcy Court have permitted a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including without limitation any administrative expense of the kind specified in Sections 503(b), 506(c), 507(a), 507(b), 1113 and 1114 of the Bankruptcy Code) equal or superior to the priority claim of Collateral Agent and the Lenders in respect of the Obligations, except for the Carve Out; or (c) seek, consent or suffer to exist any Lien on any Collateral, having a priority equal or superior to the Lien in favor of Collateral Agent or the Lenders in respect of the Obligations, or equal or superior to the Prepetition Liens in favor of the Prepetition Lender, except for the Carve Out and Permitted Liens.

Section 5.30 Cash Management Arrangements; Depositary Arrangements. Borrower and/or any Guarantor shall:

(a) Maintain in place cash management arrangements in form and substance reasonably satisfactory to Collateral Agent. Without limiting the generality of the foregoing, the parties agree that:

(i) all cash and cash equivalents held by Borrower and/or any Guarantor and all proceeds of receivables and other accounts, chattel paper, general intangibles, instruments and other payment rights for which Borrower and/or any Guarantor is an obligee shall be deposited into bank accounts of Borrower subject to any of the Control Agreements; and

(ii) except for Excluded Cash, all cash and cash equivalents held by Borrower and/or any Guarantor and all such proceeds of receivables and other accounts, chattel paper, general intangibles, instruments and other payment rights shall, on each Business Day or such other frequency as may be agreed to by Collateral Agent, be transferred to the bank accounts of Borrower for application to the Prepetition Obligations or the Obligations pursuant to the provisions hereof.

(b) In the event that Borrower and/or any Guarantor receives any cash, checks or other cash proceeds of Collateral, other than Excluded Cash, promptly upon receipt thereof, in the identical form received (except for any endorsements thereon which may be required by Collateral Agent), cause such cash, checks and cash proceeds to be paid directly into the bank accounts of Borrower subject to a Control Agreement.

(c) Except to the extent that Borrower and/or any Guarantor shall be required to make payments to Collateral Agent or any other Person pursuant to the telins of this Agreement or the other Loan Documents, and subject to the rights and remedies that may from time to time be available to Collateral Agent and the Lenders upon the occurrence of an Event of Default, Borrower and/or any Guarantor may use funds in the bank accounts of Borrower for the disbursements set forth in the Budget, subject in any case to the terms and conditions of this Agreement and the other Loan Documents.

Section 5.31 Severance Payments. Borrower and/or any Guarantor shall make no Severance Payments except as otherwise consented to in writing by Collateral Agent.

Section 5.32 Maximum Disbursements. Borrower shall not, during any Testing Period (or portion thereof), make or become obligated to make cash disbursements in an aggregate amount exceeding one hundred and ten percent (110%) of the amount of cash disbursements projected for such Testing Period (or portion thereof) as set forth in the Budget in effect during such Testing Period.

Section 5.33 Minimum Sales. Borrower shall fail, during any Testing Period (or portion thereof), to have sales in an aggregate amount of less than 85% of the amount of sales projected for such Testing Period (or portion thereof) as set forth in the Budget then in effect for such Testing Period.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

Section 6.1 Corporate Existence; Subsidiaries; Foreign Qualification. Borrower is duly organized, validly existing and in good standing under the laws of its state or jurisdiction of incorporation or organization, and is duly qualified and authorized to do business and is in good standing as a foreign entity in the jurisdictions set forth opposite its name on Schedule 6.1 hereto, which are all of the states or jurisdictions where the character of its property or its business activities makes such qualification necessary, except where a failure to so qualify would not reasonably be expected to have a Material Adverse Effect. Schedule 6.1 hereto sets forth, as of the Closing Date, each Subsidiary of Borrower, if any (and whether such Subsidiary is a Dormant Subsidiary) and each Person that is an owner of Borrower's stock, its state of formation, and its relationship to Borrower, including the percentage of equity owned by a company, each Person that owns the stock or other equity interest of Borrower, the location of its chief executive office and its principal place of business. Each Guarantor is duly organized, validly existing and in good standing under the laws of its state or jurisdiction of incorporation or organization, and is duly qualified and authorized to do business and is in good standing as a foreign entity in the jurisdictions set forth opposite its name on Schedule 6.1 hereto, which are all of the states or jurisdictions where the character of its property or its business activities makes such qualification necessary, except where a failure to so qualify would not reasonably be expected to have a Material Adverse Effect.

Section 6.2 Corporate Authority. Borrower and each Guarantor has the right and power and is duly authorized and empowered to enter into, execute and deliver the Loan Documents to which it is a party and to perform and observe the provisions of the Loan Documents. The Loan Documents to which each Credit Party is a party have been duly authorized and approved by such Credit Party's board of directors or other governing body, as applicable, and are the valid and binding obligations of such Credit Party, enforceable against such Credit Party in accordance with their respective terms and the Orders. The execution, delivery and performance of the Loan Documents do not conflict with, result in a breach in any of the provisions of, constitute a default under, or result in the creation of a Lien (other than Liens permitted under Section 5.9 hereof) upon any assets or property of any Credit Party under the provisions of, such Credit Party's Organizational Documents or any material agreement entered into after the Filing Date to which a Credit Party is a party.

Section 6.3 Compliance with Laws and Contracts. Borrower and each Guarantor:

(a) holds permits, certificates, licenses, orders, registrations, franchises, authorizations, and other approvals from any Governmental Authority necessary for the conduct of its business and is in material compliance with all applicable laws relating thereto;

(b) is in material compliance with all federal, state, local, or foreign applicable statutes, rules, regulations, and orders including, without limitation, those relating to environmental protection, occupational safety and health, and equal employment practices;

(c) has ensured that no Person who owns a controlling interest in or otherwise controls Borrower is (i) listed on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, or any other similar lists maintained by OFAC pursuant to any authorizing statute, executive order or regulation, or (ii) a Person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar executive orders;

(d) is in material compliance with all applicable Bank Secrecy Act ("BSA") and anti-money laundering laws and regulations; and

(e) is in compliance, in all material respects, with the Patriot Act.

Section 6.4 Litigation and Administrative Proceedings. Except as disclosed on Schedule 6.4 hereto and the Case, on the Closing Date there are: (a) no lawsuits, actions, investigations, or other proceedings pending or, to the best knowledge of Borrower and/or any Guarantor, threatened against Borrower and/or any Guarantor, or in respect of which Borrower and/or any Guarantor may have any liability, in any court or before any Governmental Authority, arbitration board, or other tribunal; (b) no orders, writs, injunctions, judgments, or decrees of any court or Governmental Authority to which Borrower and/or any Guarantor is a party or by which the property or assets of Borrower and/or any Guarantor are bound, except with respect to the Case; and (c) no grievances, disputes, or controversies outstanding with any union or other organization of the employees of Borrower and/or any Guarantor, or threats of work stoppage, strike, or pending demands for collective bargaining.

Section 6.5 Title to Assets. Except as set forth on Schedule 6.5 hereto, Borrower and/or any Guarantor has good title to and ownership of all material property it purports to own, which property is free and clear of all Liens, except for Permitted Liens. As of the Closing Date, Borrower and/or any Guarantor owns the real property listed on Schedule 6.5 hereto.

Section 6.6 Liens and Security Interests. Upon the entry of the Final Order, except for Permitted Liens: (a) there is and will be no U.C.C. Financing Statement or similar notice of Lien outstanding covering any personal property of Borrower and/or any Guarantor; (b) there is and will be no mortgage outstanding covering any real property of Borrower and/or any Guarantor; and (c) no real or personal property of Borrower and/or any Guarantor is subject to any Lien of any kind. The Collateral and the Collateral Agent's rights with respect to the Collateral are not subject to any set off, claims, withholding or other defenses other than those arising in the ordinary course of business consistent with past practices.

Section 6.7 Tax Returns. All federal, state and local tax returns and other reports required by law to be filed in respect of the income, business, properties and employees of Borrower and/or any Guarantor have been filed (or extended as permitted by applicable law) and except as related to Borrower's and/or any Guarantor's failure to fund its ERISA Plan obligations to the minimum levels required by law, all taxes, assessments, fees and other governmental charges that are due and payable have been paid, except as otherwise permitted herein. The provision for taxes on the books of Borrower and/or any Guarantor is adequate for all years not closed by applicable statutes and for the current fiscal year.

Section 6.8 Environmental Laws. Borrower and/or any Guarantor is in material compliance with all Environmental Laws, including, without limitation, all Environmental Laws in all jurisdictions in which Borrower and/or any Guarantor owns or operates, or has owned or operated, a facility or site, arranges or has arranged for disposal or treatment of hazardous substances, solid waste or other wastes, accepts or has accepted for transport any hazardous substances, solid waste or other wastes or holds or has held any interest in real property or otherwise. No litigation or proceeding arising under, relating to or in connection with any Environmental Law is pending or, to the best knowledge of Borrower and/or any Guarantor threatened, against Borrower and/or any Guarantor, any real property in which Borrower and/or any Guarantor holds or has held an interest or any past or present operation of Borrower and/or any Guarantor. No release, threatened release or disposal of hazardous waste, solid waste or other wastes is occurring, or has occurred (other than those that are currently being remediated in accordance with Environmental Laws), on, under or to any real property in which Borrower and/or any Guarantor holds any interest or performs any of its operations, in violation of any Environmental Law. As used in this Section 6.8, "litigation or proceeding" means any demand, claim, notice, suit, suit in equity, action, administrative action, investigation or inquiry whether brought by any Governmental Authority or private Person, or otherwise.

Section 6.9 Locations. As of the Closing Date, Borrower and any Guarantor has places of business or maintains its Accounts, Inventory and Equipment at the locations (including third party locations) set forth on Schedule 6.9 hereto, and Borrower's and any Guarantor's chief executive office is set forth on Schedule 6.9 hereto. Schedule 6.9 further specifies whether each location, as of the Closing Date, (a) is owned by Borrower and/or any Guarantor, or (b) is leased by Borrower and/or any Guarantor from a third party, and, if leased by Borrower and/or any Guarantor from a third party, if a Landlord's Waiver has been requested. As of the Closing Date, Schedule 6.9 correctly identifies the name and address of each third party location where assets of Borrower and any Guarantor are located.

Section 6.10 Continued Business. There exists no actual, pending, or, to Borrower's and/or any Guarantor's knowledge, any threatened termination, cancellation or limitation of, or any modification or change in the business relationship of Borrower and/or any Guarantor and any customer or supplier, or any group of customers or suppliers, whose purchases or supplies, individually or in the aggregate, are material to the business of Borrower and/or any Guarantor, and other than the filing of the Case, there exists no present condition or state of facts or circumstances that would have a Material Adverse Effect or prevent Borrower and/or any Guarantor from conducting such business or the transactions contemplated by this Agreement in substantially the same manner in which it was previously conducted.

Section 6.11 Employee Benefits Plans. Schedule 6.11 hereto identifies each ERISA Plan as of the Closing Date. No ERISA Event has occurred or is expected to occur with respect to an ERISA Plan. Full payment has been made of all amounts that a Controlled Group member is required, under applicable law or under the governing documents, to have paid as a contribution to or a benefit under each ERISA Plan. The liability of each Controlled Group member with respect to each ERISA Plan has been fully funded based upon reasonable and proper actuarial assumptions, has been fully insured, or has been fully reserved for on its financial statements. No changes have occurred or are expected to occur that would cause a material increase in the cost of providing benefits under the ERISA Plan. With respect to each ERISA Plan that is intended to be qualified under Code Section 401(a): (a) the ERISA Plan and any associated trust operationally comply with the applicable requirements of Code Section 401(a); (b) the ERISA Plan and any associated trust have been amended to comply with all such requirements as currently in effect, other than those requirements for which a retroactive amendment can be made within the "remedial amendment period" available under Code Section 401(b) (as extended under Treasury Regulations and other Treasury pronouncements upon which taxpayers may rely); (c) the ERISA Plan and any associated trust have received a favorable determination letter from the Internal Revenue Service stating that the ERISA Plan qualifies under Code Section 401(a), that the associated trust qualifies under Code Section 501(a) and, if applicable, that any cash or deferred arrangement under the ERISA Plan qualifies under Code Section 401(k), unless the ERISA Plan was first adopted at a time for which the above-described "remedial amendment period" has not yet expired; (d) the ERISA Plan currently satisfies the requirements of Code Section 410(b), subject to any retroactive amendment that may be made within the above-described "remedial amendment period"; and (e) no contribution made to the ERISA Plan is subject to an excise tax under Code Section 4972. With respect to any Pension Plan, the "accumulated benefit obligation" of Controlled Group members with respect to the Pension Plan (as determined in accordance with Statement of Accounting Standards No. 87, "Employers' Accounting for Pensions") does not exceed the fair market value of Pension Plan assets.

Section 6.12 Consents or Approvals. Except for the entry of the Orders, no consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority or any other Person is required to be obtained or completed by Borrower and/or any Guarantor in connection with the execution, delivery or performance of any of the Loan Documents, that has not already been obtained or completed.

Section 6.13 [Reserved]

Section 6.14 Budget. Borrower has delivered to Collateral Agent the initial Budget, covering the thirteen (13) week period commencing with the week during which the Closing Date occurred. The Budget has been prepared in good faith based upon assumptions which Borrower and/or any Guarantor believes to be reasonable assumptions. To the knowledge of Borrower and/or any Guarantor, no facts exist that (individually or in the aggregate) would result in any material change to the Budget.

Section 6.15 Regulations. Borrower and/or any Guarantor 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" (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States of America). Neither the granting of any Loan nor the use of the proceeds of any Loan will violate, or be inconsistent with, the provisions of Regulation T, U or X or any other Regulation of such Board of Governors.

Section 6.16 Material Agreements. Except as disclosed on Schedule 6.16 hereto, as of the Closing Date, Borrower and/or any Guarantor is not a party to any: (a) debt instrument (excluding the Loan Documents); (b) lease (capital, operating or otherwise), whether as lessee or lessor thereunder; (c) contract, commitment, agreement, or other arrangement involving the purchase or sale of any inventory by it, or the license of any right to or by it; (d) contract, commitment, agreement, or other arrangement with any of its "Affiliates" (as such term is defined in the Securities Exchange Act of 1934, as amended); (e) management or employment contract or contract for personal services, with any of its Affiliates that is not otherwise terminable at will or on less than ninety (90) days' notice without liability; (f) collective bargaining agreement; or (g) other contract, agreement, understanding, or arrangement with a third party that, as to subsections (a) through (g), above, if violated, breached, or terminated for any reason, would have or would be reasonably expected to have a Material Adverse Effect.

Section 6.17 Intellectual Property. Borrower and/or any Guarantor owns, possesses or has the right to use all of the material patents, patent applications, industrial designs, designs, trademarks, service marks, copyrights and licenses, and rights with respect to the foregoing necessary for the conduct of its business without any known conflict with the rights of others. Except as set forth on Schedule 6.17 hereto, Borrower and/or any Guarantor does not own any intellectual property, including, without limitation, any patents, patent applications, trademarks, service marks, copyrights, licenses, and rights with respect to the foregoing.

Section 6.18 Insurance. Borrower and/or any Guarantor maintains with financially sound and reputable insurers insurance with coverage and limits as required by law and as is customary with Persons engaged in the same businesses as Borrower and/or any Guarantor. Schedule 6.18 hereto sets forth all insurance carried by Borrower and/or any Guarantor on the Closing Date, setting forth in detail the amount and type of such insurance and the current expiration date of each insurance policy.

Section 6.19 Deposit Accounts. Schedule 6.19 hereto lists all banks and other financial institutions at which Borrower and/or any Guarantor maintains deposit or other accounts as of the Closing Date, and Schedule 6.19 hereto correctly identifies the name, address and telephone number of each depository, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

Section 6.20 Accurate and Complete Statements. The Loan Documents and the written statements made by Borrower and/or any Guarantor in connection with any of the Loan Documents do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or in the Loan Documents not misleading. After due inquiry by Borrower and/or any Guarantor, there is no known fact that Borrower and/or any Guarantor has not disclosed to Collateral Agent and the Lenders that has or is likely to have a Material Adverse Effect.

Section 6.21 Investment Company; Other Restrictions. Borrower and/or any Guarantor is not (a) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or (b) any foreign, federal, state or local statute or regulation limiting its ability to incur Indebtedness.

Section 6.22 Defaults. No Default or Event of Default exists hereunder, nor will any begin to exist immediately after the execution and delivery hereof.

Section 6.23 Existing Indebtedness. Annex 4 hereto sets forth a true and complete list of all Indebtedness of Borrower and/or any Guarantor as of the Closing Date (the "Existing Indebtedness"), in each case showing the aggregate principal amount thereof and the name of any other entity which directly or indirectly guaranteed such Indebtedness.

ARTICLE VII. EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default hereunder:

Section 7.1 Payments. If the principal of or interest on any Loan or any amount owing pursuant to Section 2.10(a) or (c) shall not be paid in full when due and payable.

Section 7.2 Special Covenants. If Borrower and/or any Guarantor, as applicable, shall fail or omit to perform and observe Section 5.3(h), 5.6, 5.7, 5.8, 5.9, 5.11, 5.12, 5.13, 5.15, 5.18, 5.20, 5.21, 5.22, 5.27, 5.28, 5.31, 5.32, 5.33, 5.34, or 5.35 hereof.

Section 7.3 Other Covenants. If Borrower and/or any Guarantor, as applicable, shall fail or omit to perform and observe any agreement or other provision (other than those referred to in Section 7.1 or 7.2 hereof) contained or referred to in this Agreement or any Related Writing that is on Borrower's part to be complied with, and that Default shall not have been fully corrected within fifteen (15) days after the earlier of (a) any Financial Officer of Borrower becoming aware of the occurrence thereof, or (b) the giving of written notice thereof to Borrower by Collateral Agent or the Required Lenders that the specified Default is to be remedied.

Section 7.4 Representations and Warranties. If any representation, warranty or statement made in or pursuant to this Agreement or any Related Writing or any other material information furnished by Borrower and/or any Guarantor to Collateral Agent or the Lenders, or any thereof, or any other holder of any Note, shall be false or erroneous.

Section 7.5 Failure to Pay Post-Filing Date Indebtedness, Etc. Borrower and/or any Guarantor shall (a) fail to pay any Indebtedness arising after the Filing Date when and as the same shall become due and payable (giving effect to any applicable grace period under the instrument evidencing such Indebtedness) (except as may be permitted by the Bankruptcy Code) or (b) fail to comply with any order of the Bankruptcy Court in any material respect.

Section 7.6 ERISA Default. The occurrence of one or more ERISA Events that (a) the Collateral Agent determines could reasonably be expected to have a Material Adverse Effect, or (b) results in a Lien on any of the assets of Borrower and/or any Guarantor.

Section 7.7 Change in Control. [Reserved].

Section 7.8 Money Judgment. A final judgment or order for the payment of money shall be rendered against Borrower and/or any Guarantor by a court of competent jurisdiction, that remains unpaid or unstayed and undischarged for a period (during which execution shall not be effectively stayed) of thirty (30) days after the date on which the right to appeal has expired, provided that the aggregate of all such judgments for Borrower shall exceed Fifty Thousand Dollars ($50,000).

Section 7.9 Material Adverse Change. There shall have occurred any condition or event that Collateral Agent or the Required Lenders determine has or is reasonably likely to have a Material Adverse Effect.

Section 7.10 Security. If any Lien granted in this Agreement or any other Loan Document in favor of Collateral Agent shall be determined to be (a) void, voidable or invalid, or is subordinated or not otherwise given the priority contemplated by this Agreement or the Orders and Borrower and/or any Guarantor has failed to promptly execute appropriate documents to correct such matters, or (b) unperfected as to any material amount of Collateral (as determined by Collateral Agent, in its reasonable discretion) and Borrower and/or any Guarantor has failed to promptly execute appropriate documents to correct such matters.

Section 7.11 Validity of Loan Documents. (a) Any material provision, in the reasonable opinion of Collateral Agent, of any Loan Document shall at any time for any reason (other than a partial or full written release in accordance with the terms thereof) cease to be valid, binding and enforceable against any Credit Party; (b) the validity, binding effect or enforceability of any Loan Document against any Credit Party shall be contested by any Credit Party; (c) any Credit Party shall deny that it has any or further liability or obligation under any Loan Document; or (d) any Loan Document shall be cancelled, terminated, revoked, rescinded, invalidated or set aside, or be declared ineffective or inoperative or in any way cease to give or provide to Agent and the Lenders the benefits purported to be created thereby.

Section 7.12 [Reserved]

Section 7.13 Continued Operation of Business. Borrower and/or any Guarantor shall be enjoined from conducting any part of its business as a debtor-in-possession; there shall occur any act of terrorism or other “force majeure” event disrupting any material portion of the business of Borrower and/or any Guarantor, which in each such case referred to in this Section 7.14 shall continue for a period of five (5) or more days and could reasonably be expected to have a Material Adverse Effect.

Section 7.14 Final Judgment. There shall remain undischarged for more than thirty (30) days any final judgment arising after the Filing Date or execution action against Borrower and/or any Guarantor, or relief from the automatic stay of Section 362(a) of the Bankruptcy Code shall be granted to any creditor or creditors of Borrower and/or any Guarantor with respect to assets having an aggregate value in excess of Fifty Thousand Dollars ($50,000), or where the deprivation of Borrower and/or any Guarantor of such assets could reasonably be expected to have a Material Adverse Effect.

Section 7.15 Pledged Letters of Credit. (a) If Borrower and/or any Guarantor, the Prepetition Lender or the Collateral Agent receives a notice of cancellation of a Pledged Letter of Credit; (b) if Borrower and/or any Guarantor, Prepetition Lender or Collateral Agent receives a notice that a Pledged Letter of Credit will not be renewed; (c) if a Pledged Letter of Credit ceases to be effective for any reason; or (d) if the issuer of any Pledged Letter of Credit shall fail to maintain a rating of no less than A- from Standard & Poor's and A3 from Moody's and otherwise acceptable to Collateral Agent, and the letter of credit shall not have been replaced, within thirty (30) days after either of such rating requirements is not met, by a new Pledged Letter of Credit issued by an issuer that meets both such rating requirements and is otherwise acceptable to Collateral Agent.

Section 7.16 Relief from Automatic Stay. Borrower and/or any Guarantor shall default in the payment when due of any principal of or interest on any post-Filing Date Indebtedness, or any pre-Filing Date Indebtedness if, by order of the Bankruptcy Court issued with respect to such Indebtedness, the default thereunder entitles the holder thereof to relief from the automatic stay under Section 362 of the Bankruptcy Code, in excess of Fifty Thousand Dollars ($50,000) in the aggregate of such post-Filing Date or pre-Filing Date Indebtedness.

Section 7.17 Modification of Any Order. The Bankruptcy Court shall enter any order: (i) amending, supplementing, altering, staying, vacating, rescinding or otherwise modifying any Order, or any other order with respect to the Case, affecting adversely in any respect this Agreement; (ii) appointing a chapter 11 trustee or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code in any of the Case; (iii) dismissing the Case or converting the Case to a Chapter 7 case; or (iv) granting relief from the automatic stay to any creditor holding or asserting a Lien or reclamation claim on a material portion of the assets of Borrower and/or any Guarantor or where the deprivation of such assets of Borrower and/or any Guarantor would reasonably be expected to have a Material Adverse Effect.

Section 7.18 Final Order. The Bankruptcy Court shall fail to enter the Final Order within thirty (30) days after the entry of the Interim Order.

Section 7.19 Termination Event under Orders. The occurrence of a Termination Event (as defined in the Orders) under either of the Orders.

Section 7.20 Application for Superpriority Claim. An application shall be filed by Borrower for the approval of any other Superpriority Claim in the Case which is pari passu with or senior to the claims of Collateral Agent and the Lenders against Borrower and/or any Guarantor unless after giving effect to the transactions contemplated by such application, all Obligations (whether contingent or otherwise) shall be paid in full in cash and the Total Commitment shall be terminated, or the Bankruptcy Court shall determine that any such Superpriority Claim has arisen.

Section 7.21 Motions with Bankruptcy Court. Borrower and/or any Guarantor shall file a motion in the Case: (i) to use cash collateral of the Lender or of the Prepetition Lenders under Section 363(c) of the Bankruptcy Code without the Lender's or the Prepetition Lenders', as applicable, consent, except for the payment of payroll and payroll-related expenses and as otherwise approved in the Orders and the First Day Orders; (ii) to recover from any portions of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code; (iii) to cut off rights in the Collateral under Section 552(b) of the Bankruptcy Code; or (iv) to take any other action or actions adverse to the Lender or the Prepetition Lenders or their rights and remedies hereunder or under any of the other Loan Documents or any of the documents evidencing or creating any of the Prepetition Obligations or Collateral Agent's, the Lender's, or the Prepetition Lenders' interest in any of the Collateral.

Section 7.22 Suit against Lenders, etc. A suit or action against any of Collateral Agent, the Lenders, the Prepetition Lenders shall be commenced by Borrower and/or any Guarantor, any federal, state environmental protection or health and safety agency or any Statutory Committee in the Case, which suit or action asserts any claim or legal or equitable remedy contemplating subordination of any claim or Lien of the Lenders, Collateral Agent, or the Prepetition Lenders, and shall remain undismissed for fifteen (15) days after its commencement and, with respect to any suit or action by any such federal or state agency or Statutory Committee, a preliminary order for relief or judgment or decree shall have been entered in such suit or action against the Lenders, Collateral Agent, or the Prepetition Lenders and, in the case of a preliminary order, such preliminary order has not been stayed within ten (10) days after its entry.

Section 7.23 Reorganization Plan or Disclosure Statement. Without the prior written consent of Collateral Agent and the Required Lenders, a reorganization plan or a related disclosure statement or any draft thereof is distributed by or on behalf of Borrower and/or any Guarantor to any Person and such reorganization plan or disclosure statement does not provide for the Payment in Full upon the effectiveness of such plan of reorganization.

ARTICLE VIII. REMEDIES UPON DEFAULT

Section 8.1 Remedies. If any Event of Default shall occur and then be continuing, Collateral Agent may, and shall upon the written instruction of Required Lenders (which for purposes of such instruction shall include Collateral Agent in its capacity as a Lender), by written notice to Borrower, take any or all of the following actions, without prejudice to the rights of Collateral Agent or any Lender to enforce its claims against the Borrower and/or any Guarantor, except as otherwise specifically provided for in this Agreement: (i) declare the Total Commitment terminated, whereupon the Commitment of each Lender shall forthwith terminate immediately and any commitment fees shall forthwith become due and payable without any other notice of any kind; (ii) declare the principal of and any accrued interest in respect of all Loans and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower and/or any Guarantor; (iii) subject to the notice provisions of the following paragraph, enforce, as Collateral Agent (or direct the Collateral Agent to enforce), any or all of the Liens and security interests created pursuant to the Security Documents; and (iv) subject to the notice provisions of the following paragraph, apply any cash collateral held pursuant to this Agreement to repay the Obligations.

In addition to and not in derogation of the above paragraph, upon the occurrence of an Event of Default, subject to any limitations set forth in the Final Order, Collateral Agent shall provide the Debtors, the United States Trustee for the Southern District of New York and any Statutory Committee with five (5) days' prior notice of the exercise of remedies under this Section 8.1 and under the Security Documents, which such notice will specify the Event of Default and the basis therefor and will be given by Collateral Agent via facsimile or email. After seven (7) days from the date that the Collateral Agent provides the Debtors, the United States Trustee for the Southern District of New York and any Statutory Committee with five (5) days' prior notice of the exercise of remedies under this Section 8.1 and under the Security Documents, Lender shall have the right to seek an emergency hearing before the Bankruptcy Court for the purpose of determining whether an Event of Default has occurred; provided, that Borrower shall have no right to use or seek to use the cash Collateral during such notice period, except for the payment of payroll and payroll-related expenses. If Lender obtains an order of the Bankruptcy Court to the effect that an Event of Default has occurred, upon the expiration of such notice period, Collateral Agent and the Lenders shall have relief from the automatic stay without further notice or court order, and Collateral Agent may foreclose on all or any portion of the Collateral or otherwise exercise remedies against the Collateral permitted by the Security Documents and other nonbankruptcy law, including, without limitation, the exercise of rights of setoff, the collection of accounts receivable and application of the proceeds thereof to the Obligations, and occupation of the premises of the Borrower and/or any Guarantor to sell the Collateral, and any right of the Borrower and/or any Guarantor to use cash collateral shall cease.

In addition, subject to any limitations set forth in the Final Order, at the expiration of any seven (7) day notice period referred to above, in case any one or more Events of Default shall have occurred and be continuing, and whether or not the Lenders shall have accelerated the maturity of the Loans pursuant to clause (ii) above, each Lender, if owed any amount with respect to the Loans or other Obligations, may, and the Collateral Agent shall if directed by the Required Lenders (which for purposes of such direction shall include Collateral Agent in its capacity as a Lender), and may in its sole discretion, on behalf of the Lenders, proceed to protect and enforce its rights by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations to such Lender are evidenced, including as permitted by applicable law the obtaining of the ex parte appointment of a receiver, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of such Lender.

No remedy herein conferred upon Collateral Agent or the Lenders is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

Section 8.2 [Reserved]

Section 8.3 Offsets. If there shall occur or exist any Event of Default referred to in Article VII hereof or if the maturity of the Obligations is accelerated pursuant to Section 8.1 hereof, each Lender shall have the right at any time to set off against, and to appropriate and apply toward the payment of, any and all of the Obligations then owing by Borrower and/or any Guarantor to such Lender (including, without limitation, any participation purchased or to be purchased pursuant to Section 8.4 hereof), whether or not the same shall then have matured, any and all deposit (general or special) balances and all other indebtedness then held or owing by such Lender (including, without limitation, by branches and agencies or any affiliate of such Lender, wherever located) to or for the credit or account of Borrower and/or any Guarantor, as applicable, all without notice to or demand upon Borrower and/or any Guarantor or any other Person, all such notices and demands being hereby expressly waived by Borrower and/or any Guarantor.

Section 8.4 Application and Sharing of Set-Off Amounts. Each Lender further agrees with the other Lenders that, if it at any time it shall receive any payment for or on behalf of Borrower and/or any Guarantor on any Indebtedness owing by Borrower and/or any Guarantor to that Lender (whether by voluntary payment, by realization upon security, by reason of offset of any deposit or other Indebtedness, by counterclaim or cross-action, by enforcement of any right under any Loan Document, or otherwise), it shall apply such payment first to any and all Indebtedness owing by Borrower and/or any Guarantor to that Lender pursuant to this Agreement (including, without limitation, any participation purchased or to be purchased pursuant to this Section 8.4 or any other Section of this Agreement). Each Credit Party agrees that any Lender so purchasing a participation from the other Lenders or any thereof pursuant to this Section 8.4 may exercise all of its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

Section 8.5 Other Remedies. The remedies in this Article VIII are in addition to, not in limitation of, any other right, power, privilege, or remedy, either in law, in equity, or otherwise, to which the Lenders may be entitled. Collateral Agent shall exercise the rights under this Article VIII and all other collection efforts on behalf of the Lenders and no Lender shall act independently with respect thereto, except as otherwise specifically set forth in this Agreement.

Section 8.6 Application of Proceeds.

(a) Payments Prior to Exercise of Remedies. Prior to the exercise by Collateral Agent on behalf of the Lenders of remedies under this Agreement or the other Loan Documents, all monies received by Collateral Agent shall be applied, unless otherwise required or provided by the terms of this Agreement or the other Loan Documents or by applicable law, as follows (provided that Collateral Agent shall have the right at all times to apply any payment received from Borrower and/or any Guarantor first to the payment of all Obligations (to the extent not paid by Borrower and/or any Guarantor) incurred by Collateral Agent pursuant to Section 11.5 hereof and to the payment of Related Expenses):

(i) first, to Collateral Agent for application to the Obligations;

(ii) second, to Collateral Agent to establish a reserve in an aggregate amount not to exceed the aggregate amount of disbursements permitted under the Budget for the period commencing on the date of receipt of such monies and ending on the last date of the then current Budget (the "Cash Reserve"); and

(iii) third, subject to further approval of the Bankruptcy Court, to Collateral Agent to be paid to the Prepetition Lender for application to the Prepetition Obligations.

(b) Payments Subsequent to Exercise of Remedies. After the exercise by Collateral Agent or the Lenders of remedies under this Agreement or the other Loan Documents, all monies received by Collateral Agent shall be applied, unless otherwise required by the terms of the other Loan Documents or by applicable law, as follows:

(i) first, to the payment of all Obligations (to the extent not paid by Borrower and/or any Guarantor) incurred by Collateral Agent pursuant to Section 11.5 hereof and to the payment of Related Expenses;

(ii) second, to the payment pro rata of (A) interest then accrued and payable on the outstanding Loans, and (B) any fees then accrued and payable to Collateral Agent or the Lenders;

(iii) third, to the Lenders, on a pro rata basis, based upon each such Lender's Applicable Commitment Percentage; and

(iv) finally, any remaining surplus after all of the Secured Obligations have been paid in full, to Borrower (for distribution) or to whomsoever shall be lawfully entitled thereto.

ARTICLE IX. PRIORITY AND SECURITY

Section 9.1 Cash Management Arrangements; Depository Arrangements. Each Credit Party shall:

(a) Maintain in place cash management arrangements in accordance with the First Day Orders in connection with the Case relating to such Credit Party's cash management systems and in form and substance reasonably satisfactory to the Collateral Agent. Without limiting the generality of the foregoing, the parties agree that:

(i) all cash and cash equivalents held by any Credit Party and all proceeds of receivables and other accounts, chattel paper, general intangibles, instruments and other payment rights for which any of the Credit Parties is an obligee shall be deposited into any bank accounts of the Borrower; and

(ii) except for Excluded Cash, all cash and cash equivalents held by any Credit Party and all such proceeds of receivables and other accounts, chattel paper, general intangibles, instruments and other payment rights shall, on the last Business Day of each week or such other frequency as may be agreed to by the Collateral Agent, be transferred to the bank accounts of Borrower for application to the Obligations pursuant to the provisions hereof.

(a) Maintain in place cash management arrangements in accordance with the First Day Orders in connection with the Case relating to such Credit Party's cash management systems and in form and substance reasonably satisfactory to the Collateral Agent. Without limiting the generality of the foregoing, the parties agree that:

(i) all cash and cash equivalents held by any Credit Party and all proceeds of receivables and other accounts, chattel paper, general intangibles, instruments and other payment rights for which any of the Credit Parties is an obligee shall be deposited into any bank accounts of the Borrower; and

(ii) except for Excluded Cash, all cash and cash equivalents held by any Credit Party and all such proceeds of receivables and other accounts, chattel paper, general intangibles, instruments and other payment rights shall, on the last Business Day of each week or such other frequency as may be agreed to by the Collateral Agent, be transferred to the bank accounts of Borrower for application to the Obligations pursuant to the provisions hereof.

(b) In the event that any Credit Party receives any cash, checks or other cash proceeds of Collateral, other than Excluded Cash, promptly upon receipt thereof, in the identical form received (except for any endorsements thereon which may be required by the Collateral Agent), cause such cash, checks and cash proceeds to be paid directly into the bank accounts of Borrower.

(c) Except to the extent that any Credit Party shall be required to make payments to Collateral Agent or any other Person pursuant to the terms of this Agreement or the other Loan Documents, and subject to the rights and remedies that may from time to time be available to the Collateral Agent and the Lenders, upon the occurrence of an Event of Default, the Debtors may use funds in the bank accounts of Borrower for the purposes set forth in Section 5.18, subject in any case to the terms and conditions of this Agreement and the other Loan Documents, and no such funds may be applied to the Prepetition Obligations except as otherwise provided in this Agreement or any other Loan Document or as permitted by the Bankruptcy Court or in any order entered by the Bankruptcy Court.

Section 9.2 Collections and Receipt of Proceeds by Collateral Agent. Each Credit Party hereby constitutes and appoints Collateral Agent, or Collateral Agent's designated agent, as such Credit Party's attorney in fact to exercise, at any time all or any of the following powers which, being coupled with an interest, shall be irrevocable until the complete and full payment of all of the Obligations:

(a) to receive, retain, acquire, take, endorse, assign, deliver, accept, and deposit, in the name of Collateral Agent or any Credit Party, any and all of such Credit Party's cash, instruments, chattel paper, documents, proceeds of Accounts, proceeds of Inventory, collection of Accounts, and any other writings relating to any of the Collateral. Each Credit Party hereby waives presentment, demand, notice of dishonor, protest, notice of protest, and any and all other similar notices with respect thereto, regardless of the form of any endorsement thereof Collateral Agent shall not be bound or obligated to take any action to preserve any rights therein against prior parties thereto;

(b) to transmit to Account Debtors, on any or all of such Credit Party's Accounts, notice of assignment to Collateral Agent thereof and security interest of Collateral Agent and the Lenders therein, and to request from such Account Debtors at any time, in the name of Collateral Agent or any Credit Party, information concerning such Credit Party's Accounts and the amounts owing thereon;

(c) to transmit to purchasers of any or all of such Credit Party's Inventory, notice of Collateral Agent's and the Lenders' security interest therein, and to request from such purchasers at any time, in the name of Collateral Agent or such Credit Party, information concerning such Credit Party's Inventory and the amounts owing thereon by such purchasers;

(d) to notify and require Account Debtors on such Credit Party's Accounts and purchasers of Credit Party's Inventory to make payment of their indebtedness directly to Collateral Agent;

(e) to enter into or assent to such amendment, compromise, extension, release or other modification of any kind of, or substitution for, the Accounts, or any thereof, as Collateral Agent, in its sole discretion, may deem to be advisable;

(f) to enforce the Accounts or any thereof, or any other Collateral, by suit or otherwise, to maintain any such suit or other proceeding in the name of Collateral Agent or any Credit Party, and to withdraw any such suit or other proceeding. Each Credit Party agrees to lend every assistance requested by Collateral Agent in respect of the foregoing, all at no cost or expense to Collateral Agent and including, without limitation, the furnishing of such witnesses and of such records and other writings as Collateral Agent may require in connection with making legal proof of any Account. Each Credit Party agrees to reimburse Collateral Agent in full for all court costs and attorneys' fees and every other cost, expense or liability, if any, incurred or paid by Collateral Agent in connection with the foregoing, which obligation of each Credit Party, jointly and severally, shall constitute Obligations, shall be secured by the Collateral and shall bear interest, until paid, at the Default Rate; and

(g) to accept all collections in any form relating to the Collateral, including remittances that may reflect deductions, and to deposit the same, into Borrower's bank accounts or, at the option of Collateral Agent, to apply them as a payment against the Prepetition Obligations, the Loans or any other Obligations in accordance with this Agreement.

Section 9.3 Superpriority Claims and Collateral Security. Each Credit Party hereby represents, warrants and covenants that, except as otherwise expressly provided in this Section 9.3, upon the entry of the Interim Order with respect to the Term Loans made pursuant to such Order and thereafter, the Final Order:

(a) subject to the Carve Out and the Other Prepetition Liens, the Obligations shall be:

(i) secured pursuant to Section 364(d)(1) of the Bankruptcy Code by first priority security interests in and liens on (A) all of the assets of the Debtors, including, without limitation, all goods (including without limitation, equipment and inventory), deposit accounts, investment property, accounts, chattel paper, instruments, documents, letter-of-credit rights, commercial tort claims, insurance claims, supporting obligations and liens, real estate interests and general intangibles of the Debtors of any nature, whether now owned or hereafter acquired and (B) any assets of the Debtors in which the Prepetition Lenders were not granted a security interest or lien under the terms of the Prepetition Loan Documents, senior in priority to all other security interests and liens (the "First Priority Liens"); and

(ii) entitled to Superpriority Claim status pursuant to Section 364(c)(1) of the Bankruptcy Code senior to any Superpriority Claim granted as adequate protection in respect to the claims of the Prepetition Lenders and any other claims of any entity, including, without limitation, any claims under Sections 503, 507, 1113 and 1114 of the Bankruptcy Code; and

(b) the First Priority Liens are not subject to any transfers or liens preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code.

Section 9.4 Collateral Security Perfection. Each Credit Party agrees to take all actions that Collateral Agent may reasonably request as a matter of nonbankruptcy law to perfect and protect Collateral Agent's and the Lenders' Liens upon the Collateral and for such Liens to obtain the priority therefor contemplated hereby, including, without limitation, executing and delivering such documents and instruments, financing statements, providing such notices and assents of third parties, obtaining such governmental approvals and providing such other instruments and documents in recordable form as Collateral Agent may request. Each Credit Party hereby irrevocably authorizes Collateral Agent at any time and from time to time to file in any filing office in any U.C.C. jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as "all assets" or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the U.C.C. of such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the U.C.C. of any jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether such Credit Party is an organization, the type of organization and any organization identification number issued to such Credit Party, and, (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Each Credit Party agrees to furnish any such information to Collateral Agent promptly upon Collateral Agent's request.

Section 9.5 No Discharge; Survival of Claims. Each Credit Party agrees that: (a) the Obligations shall not be discharged by the entry of an order confirming a reorganization plan (and each Credit Party pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge); (b) the Superpriority Claim granted to Collateral Agent and the Lenders pursuant to the Orders and the Liens granted to Collateral Agent and the Lenders pursuant to the Orders and the other Security Documents, shall not be affected in any manner by the entry of an order confirming a reorganization plan; and (c) each Credit Party shall not propose or support any reorganization plan that is not conditioned upon the Payment In Full on or prior to the Maturity Date, and, with respect to Obligations arising pursuant to Section 11.5 after such date, thereafter for the Payment in Full of such Obligations in cash when due and payable.

(a) Application of Collections. Deposits to the bank accounts of Borrower shall be credited to Borrower as set forth in Section 8.6.

ARTICLE X. THE AGENT

The Lenders authorize Hillair Capital Management LLC, and Hillair Capital Management LLC hereby agrees to act as Collateral Agent for the Lenders under this Agreement and the other Loan Documents upon the terms and conditions set forth elsewhere in this Agreement, and upon the following terms and conditions:

Section 10.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Collateral Agent to take such action as agent on its behalf and to exercise such powers hereunder as are delegated to Collateral Agent by the terms hereof, together with such powers as are reasonably incidental thereto. Neither Collateral Agent nor any of its affiliates, directors, officers, attorneys or employees shall: (a) be liable for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct (as determined by a court of competent jurisdiction), or be responsible in any manner to any of the Lenders for the effectiveness, enforceability, genuineness, validity or due execution of this Agreement or any other Loan Documents; (b) be under any obligation to any Lender to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions hereof or thereof on the part of Borrower and/or any Guarantor, or the financial condition of Borrower and/or any Guarantor; (c) be liable to Borrower and/or any Guarantor for consequential damages resulting from any breach of contract, tort or other wrong in connection with the negotiation, documentation, administration or collection of the Loans, or any of the Loan Documents. Notwithstanding any provision to the contrary contained in this Agreement or in any other Loan Document, Collateral Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall 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 other Loan Document or otherwise exist against Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in other Loan Documents with reference to 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.

Section 10.2 Note Holders. Collateral Agent may treat the payee of any Note as the holder thereof (or, if there is no Note, the holder of the interest as reflected on the books and records of Collateral Agent) until written notice of transfer shall have been filed with Collateral Agent, signed by such payee and in form satisfactory to Collateral Agent.

Section 10.3 Consultation With Counsel. Collateral Agent may consult with legal counsel selected by Collateral Agent and shall not be liable for any action taken or suffered in good faith by Collateral Agent in accordance with the opinion of such counsel.

Section 10.4 Documents. Collateral Agent shall not be under any duty to examine into or pass upon the validity, effectiveness, genuineness or value of any Loan Document or any other Related Writing furnished pursuant hereto or in connection herewith or the value of any collateral obtained hereunder, and Collateral Agent shall be entitled to assume that the same are valid, effective and genuine and what they purport to be.

Section 10.5 Agent and Affiliates. Hillair and its affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower and its Affiliates as though Hilliar Capital Management LLC was not Collateral Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, Hillair or its affiliates may receive information regarding Borrower or any Affiliate (including information that may be subject to confidentiality obligations in favor Borrower or such Affiliate) and acknowledge that Collateral Agent shall be under no obligation to provide such information to other Lenders. With respect to Loans and Letters of Credit (if any), Hillair and its affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though Hillair Capital Management LLC was not Collateral Agent, and the terms "Lender" and "Lenders" include Hillair and its affiliates, to the extent applicable, in their individual capacities.

Section 10.6 Notice of Default. Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless Collateral Agent has received notice from a Lender or Borrower and/or any Guarantor referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that Collateral Agent receives such a notice, Collateral Agent shall give notice thereof to the Lenders. Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that, unless and until Collateral Agent shall have received such directions, Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable, in its discretion, for the protection of the interests of the holders of the Obligations.

Section 10.7 Action by Collateral Agent. Subject to the other terms and conditions hereof, so long as Collateral Agent shall be entitled, pursuant to Section 10.6 hereof, to assume that no Default or Event of Default shall have occurred and be continuing, Collateral Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights that may be vested in it by, or with respect to taking or refraining from taking any action or actions that it may be able to take under or in respect of, this Agreement. Collateral Agent shall incur no liability under or in respect of this Agreement by acting upon any notice, certificate, warranty or other paper or instrument believed by it to be genuine or authentic or to be signed by the proper party or parties, or with respect to anything that it may do or refrain from doing in the reasonable exercise of its judgment, or that may seem to it to be necessary or desirable in the premises. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Collateral Agent as a result of Collateral Agent's acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders.

Section 10.8 Release of Collateral In the event of a transfer of assets permitted by Section 5.12 hereof (or otherwise permitted pursuant to this Agreement) where the proceeds of such transfer are applied in accordance with the terms of this Agreement to the extent required to be so applied, Collateral Agent, at the request and expense of Borrower and/or any Guarantor, is hereby authorized by the Lenders to (a) release such Collateral from this Agreement, and (b) duly assign, transfer and deliver to Borrower and/or any Guarantor (without recourse and without any representation or warranty) such Collateral as is then (or has been) so transferred or released and as may be in possession of Collateral Agent and has not theretofore been released pursuant to this Agreement.

Section 10.9 Delegation of Duties. Collateral Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. Collateral Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct, as determined by a court of competent jurisdiction.

Section 10.10 Indemnification of Agent. The Lenders agree to indemnify Collateral Agent (to the extent not reimbursed by Borrower) ratably, according to their respective Applicable Commitment Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against Collateral Agent, in its capacity as Collateral Agent, in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by Collateral Agent with respect to this Agreement or any other Loan Document, provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees and expenses) or disbursements resulting from Collateral Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction, or from any action taken or omitted by Collateral Agent in any capacity other than as Collateral Agent under this Agreement or any other Loan Document. No action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 10.10. The undertaking in this Section 10.10 shall survive repayment of the Loans, cancellation of the Notes, if any, termination of the Total Commitment, any foreclosure under, or modification, release or discharge of, any or all of the Loan Documents, termination of this Agreement and the resignation or replacement of the Collateral Agent.

Section 10.11 Successor Collateral Agent. Collateral Agent may resign as Collateral Agent hereunder by giving not fewer than ten (10) days prior written notice to Borrower, the Guarantors, and the Lenders. If Collateral Agent shall resign under this Agreement, then either (a) the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders (with the consent of Borrower so long as an Event of Default has not occurred and which consent shall not be unreasonably withheld), or (b) if a successor agent shall not be so appointed and approved within the ten (10) day period following Collateral Agent's notice to the Lenders of its resignation, then Collateral Agent shall appoint a successor agent that shall serve as collateral agent until such time as the Required Lenders appoint a successor collateral agent. If no successor agent has accepted appointment as Collateral Agent by the date that is ten (10) days following a retiring Collateral Agent's notice of resignation, the retiring Collateral Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of Collateral Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Upon its appointment, such successor agent shall succeed to the rights, powers and duties as agent, and the term "Collateral' Agent" means such successor effective upon its appointment, and the former agent's rights, powers and duties as agent shall be terminated without any other or further act or deed on the part of such former agent or any of the parties to this Agreement. After any retiring Collateral Agent's resignation as Collateral Agent, the provisions of this Article X shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement and the other Loan Documents.

Section 10.12 No Reliance on Collateral Agent's Customer Identification Program . Each Lender acknowledges and agrees that neither such Lender, nor any of its affiliates, participants or assignees, may rely on Collateral Agent to carry out such Lender's or its affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other anti-terrorism law, including any programs involving any of the following items relating to or in connection with Borrower and/or any Guarantor, its affiliates or agents, the Loan Documents or the transactions hereunder: (a) any identity verification procedures; (b) any record keeping; (c) any comparisons with government lists; (d) any customer notices; or (e) any other procedures required under the CIP Regulations or such other laws.

ARTICLE XI. MISCELLANEOUS

Section 11.1 Guarantee of the Guarantors.

(a) The Guarantee. The Guarantors hereby jointly and severally guarantee, as primary obligors and not as a surety, to each Lender and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code) on the Loans made by the Lenders to, and any Notes held by each Lender of, the Borrower, and all other Obligations from time to time owing to any Lender by any Credit Party under any Loan Document in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "Guaranteed Obligations"). The Guarantors hereby, jointly and severally, agree that if the Borrower or other Guarantors shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

(b) Obligations Unconditional. The obligations of the Guarantors under Section 11.1(a) shall constitute a guaranty of payment and to the fullest extent permitted by applicable law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement, the Term Loans, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in palt or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of any Lender or the Collateral Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor.

To the extent permitted by law, the Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Lender and/or the Collateral Agent exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. To the extent permitted by law, the Guarantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Lender or the Collateral Agent upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Lender and/or the Collateral Agent shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by and the Lender and/or the Collateral Agent, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the and the Lender and/or the Collateral Agent or any other person at any time of any right or remedy against Borrower or against any other person which may be or become liable in respect of all or any payment of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders and the Collateral Agent, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

(c) Reinstatement. The obligations of the Guarantors under this Section 11.1(c) shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or any other Credit Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations.

(d) Subrogation; Subordination. Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitment of the Lenders under this Agreement, it shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in 11.1(a), whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any indebtedness of any Credit Party to another Credit Party permitted pursuant to this Agreement shall be subordinated to such Credit Party's Obligations.

(e) Remedies. The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in this Agreement for purposes of Section 11.1(a), notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.1(a).

(f) Instrument for the Payment of Money. Each Guarantor hereby acknowledges that the guarantee in this Section 11.1 constitutes an instrument for the payment of money, and consents and agrees that any Lender or Collateral Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213 to the extent permitted thereunder.

(g) Continuing Guarantee. The guarantee in this Section 11.1 is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

(h) General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 11.1(a) would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.1(a), then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Credit Party or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

(i) Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.1(d). The provisions of this subsection shall in no respect limit the obligations and liabilities of any Guarantor to the Collateral Agent, and the Lenders and each Guarantor shall remain liable to the Collateral Agent and the Lenders for the full amount guaranteed by such Guarantor hereunder.

Section 11.2 Lenders' Independent Investigation. Each Lender, by its signature to this Agreement, acknowledges and agrees that Collateral Agent has not made any representation or warranty, express or implied, with respect to the creditworthiness, financial condition, or any other condition of Borrower and/or any Guarantor or with respect to the statements contained in any information memorandum furnished in connection herewith or in any other oral or written communication between Collateral Agent and such Lender. Each Lender represents that it has made and shall continue to make its own independent investigation of the creditworthiness, financial condition and affairs of Borrower and/or any Guarantor in connection with the extension of credit hereunder, and agrees that Collateral Agent does not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto (other than such notices as may be expressly required to be given by Collateral Agent to the Lenders hereunder), whether coming into its possession before the first Credit Event hereunder or at any time or times thereafter. Each Lender further represents that it has reviewed each of the Loan Documents.

Section 11.3 No Waiver; Cumulative Remedies. No omission or course of dealing on the part of Collateral Agent, any Lender or the holder of any Note (or, if there is no Note, the holder of the interest as reflected on the books and records of Agent) in exercising any right, power or remedy hereunder or under any of the Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or under any of the Loan Documents. The remedies herein provided are cumulative and in addition to any other rights, powers or privileges held under any Loan Documents or by operation of law, by contract or otherwise.

Section 11.4 Amendments, Waivers and Consents.

(a) General Rule. No amendment, modification, termination, or waiver of any provision of any Loan Document nor consent to any variance therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) Exceptions to the General Rule. Notwithstanding the provisions of subsection (a) of this Section 11.4:

(i) Subject to subparts (ii) and (iii) below, consent of each Lender affected thereby shall be required with respect to: (A) any increase in the Commitment of such Lender hereunder; (B) the extension of maturity of the Loans, the payment date of interest or scheduled principal thereunder, or the payment date of commitment or other fees payable hereunder; (C) any reduction in the stated rate of interest on the Loans (provided that the institution of the Default Rate and a subsequent removal of the Default Rate shall not constitute a decrease in interest rate pursuant to this Section 11.4), or in any amount of interest or scheduled principal due on any Loan, or any reduction in the stated rate of commitment fees payable hereunder or any change in the manner of pro rata application of any payments made by Borrower and/or any Guarantor to the Lenders hereunder; (D) any change in any percentage voting requirement, voting rights, or the Required Lenders definition in this Agreement; (E) the release of all or substantially all of the Collateral securing the Secured Obligations (in each case, except as expressly provided in the Loan Documents); or (F) any amendment to this Section 11.4(a) or Section 8.4 or 8.6 hereof.

(ii) Provisions Relating to Special Rights and Duties. No provision of this Agreement affecting Collateral Agent in its capacity as such shall be amended, modified or waived without the consent of Collateral Agent.

(c) Generally. Notice of amendments or consents ratified by the Lenders hereunder shall be forwarded by Collateral Agent to all of the Lenders. Each Lender or other holder of a Note (or interest in any Loan) shall be bound by any amendment, waiver or consent obtained as authorized by this Section 11.4, regardless of its failure to agree thereto.

Section 11.5 Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing and, if to a Credit Party, mailed or delivered to it, addressed to it at the address specified on the signature pages of this Agreement, if to a Lender, mailed or delivered to it, addressed to the address of such Lender specified on the signature pages of this Agreement, or, as to each party, at such other address as shall be designated by such party in a written notice to each of the other parties. All notices, statements, requests, demands and other communications provided for hereunder shall be deemed to be given or made when hand delivered, delivered by overnight courier or two (2) Business Days after being deposited in the mails with postage prepaid by registered or certified mail, addressed as aforesaid, or sent by facsimile with telephonic confirmation of receipt (if received during a Business Day, otherwise the following Business Day), except that notices from a Credit Party to Collateral Agent or the Lenders pursuant to any of the provisions hereof shall not be effective until received. For purposes of Article II hereof, Collateral Agent and the Lenders shall be entitled to rely on telephonic instructions from any person that Collateral Agent or any Lender, as the case may be, in good faith believes is an Authorized Officer, and each Credit Party shall hold Collateral Agent and each Lender harmless from any loss, cost or expense resulting from any such reliance.

Section 11.6 Costs, Expenses and Taxes. Each Credit Party agrees to pay on demand all costs and expenses of Collateral Agent and all Related Expenses, including but not limited to: (a) syndication, administration, travel and out-of-pocket expenses, including but not limited to attorneys' fees and expenses, of Collateral Agent in connection with the preparation, negotiation and closing of the Loan Documents and the administration of the Loan Documents, the collection and disbursement of all funds hereunder and the other instruments and documents to be delivered hereunder; (b) extraordinary expenses of Collateral Agent in connection with the administration of the Loan Documents and the other instruments and documents to be delivered hereunder; and (c) the reasonable fees and out-of-pocket expenses of special counsel for Collateral Agent, with respect to the foregoing, and of local counsel, if any, who may be retained by said special counsel with respect thereto. Each Credit Party also agrees to pay on demand all costs and expenses of Collateral Agent and the Lenders, including reasonable attorneys' fees and expenses, in connection with the restructuring or enforcement of the Obligations, this Agreement or any Related Writing. In addition, Borrower shall pay any and all stamp, transfer, documentary and other taxes, assessments, charges and fees payable or determined to be payable in connection with the execution and delivery of the Loan Documents, and the other instruments and documents to be delivered hereunder, and agree to hold Collateral Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or failure to pay such taxes or fees. All obligations provided for in this Section 11.6 shall survive any termination of this Agreement.

Section 11.7 Indemnification. Each Credit Party agrees to defend, indemnify and hold harmless Collateral Agent and the Lenders (and their respective affiliates, officers, directors, attorneys, agents and employees) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees) or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against Collateral Agent or any Lender in connection with any investigative, administrative or judicial proceeding (whether or not such Lender or Collateral Agent shall be designated a party thereto) or any other claim by any Person relating to or arising out of any Loan Document or any actual or proposed use of proceeds of the Loans or any of the Obligations, or any activities of Borrower, and/or any Guarantor, or its Affiliates; provided that none of any Lender or Collateral Agent (nor their respective affiliates, officers, directors, attorneys, agents and employees) shall have the right to be indemnified under this Section 11.7 for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction. All obligations provided for in this Section 11.7 shall survive any termination of this Agreement.

Section 11.8 Obligations Several; No Fiduciary Obligations. The obligations of the Lenders hereunder are several and not joint. Nothing contained in this Agreement and no action taken by Collateral Agent or the Lenders pursuant hereto shall be deemed to constitute Collateral Agent or the Lenders a partnership, association, joint venture or other entity. No default by any Lender hereunder shall excuse the other Lenders from any obligation under this Agreement; but no Lender shall have or acquire any additional obligation of any kind by reason of such default. The relationship between each Credit Party and the Lenders with respect to the Loan Documents and the Related Writings is and shall be solely that of debtor and creditors, respectively, and none of Collateral Agent or any Lender shall have any fiduciary obligation toward any Credit Party with respect to any such documents or the transactions contemplated thereby.

Section 11.9 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts and by facsimile or .pdf signature, each of which counterparts when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

Section 11.10 Binding Effect; Borrower's Assignment. This Agreement shall become effective when it shall have been executed by Borrower, each of the Guarantors, Collateral Agent (on its own behalf and, by signing as Collateral Agent) and each Lender and thereafter shall be binding upon and inure to the benefit of Borrower, the Guarantors, Collateral Agent and each of the Lenders and their respective successors and assigns, except that each Credit Party shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of Collateral Agent and all of the Lenders.

Section 11.11 Lender Assignments.

(a) Assignments of Commitments. Each Lender shall have the right at any time or times to assign to an Eligible Transferee (other than to a Lender that shall not be in compliance with this Agreement), without recourse, all or a percentage of all of the following: (i) such Lender's Commitment; (ii) all Loans made by that Lender; and (iii) such Lender's Notes, and any participation purchased pursuant to Section 8.4 hereof.

(b) Prior Consent. No assignment may be consummated pursuant to this Section 11.10 without the prior written consent of Collateral Agent (other than an assignment by any Lender to any affiliate of such Lender which affiliate is an Eligible Transferee and either wholly-owned by a Lender or is wholly-owned by a Person that wholly owns, either directly or indirectly, such Lender, or to another Lender), which consent of Collateral Agent shall not be unreasonably withheld. Anything herein to the contrary notwithstanding, any Lender may at any time make a collateral assignment of all or any portion of its rights under the Loan Documents to a Federal Reserve Bank, and no such assignment shall release such assigning Lender from its obligations hereunder.

(c) Minimum Amount. Each such assignment shall be in a minimum amount of the lesser of Fifty Thousand Dollars ($50,000) of the assignor's Commitment and interest herein or the entire amount of the assignor's Commitment and interest herein.

(d) Assignment Fee. Unless the assignment shall be to an affiliate of the assignor or the assignment shall be due to merger of the assignor or for regulatory purposes, either the assignor or the assignee shall remit to Collateral Agent, for its own account, an administrative fee of Three Thousand Five Hundred Dollars ($3,500), unless the Collateral Agent waives all or any portion of such fee in writing.

(e) Assignment Agreement. Unless the assignment shall be due to merger of the assignor or a collateral assignment for regulatory purposes, the assignor shall (i) cause the assignee to execute and deliver to Borrower, and/or any Guarantor, and Collateral Agent an Assignment Agreement, and (ii) execute and deliver, or cause the assignee to execute and deliver, as the case may be, to Collateral Agent such additional amendments, assurances and other writings as Collateral Agent may reasonably require.

(f) Non-U.S. Assignee. If the assignment is to be made to an assignee that is organized under the laws of any jurisdiction other than the United States or any state thereof, the assignor Lender shall cause such assignee, at least five (5) Business Days prior to the effective date of such assignment: (i) to represent to the assignor Lender (for the benefit of the assignor Lender, Collateral Agent and Borrower) that under applicable law and treaties no taxes will be required to be withheld by Collateral Agent, Borrower or the assignor with respect to any payments to be made to such assignee in respect of the Loans hereunder; (ii) to furnish to the assignor Lender (and, in the case of any assignee registered in the Register (as defined below), Collateral Agent and Borrower) either U.S. Internal Revenue Service Form W-8ECI or U.S. Internal Revenue Service Form W-8BEN, as applicable (wherein such assignee claims entitlement to complete exemption from U.S. federal withholding tax on all payments hereunder); and (iii) to agree (for the benefit of the assignor, Collateral Agent and Borrower) to provide to the assignor Lender (and, in the case of any assignee registered in the Register, to Collateral Agent and Borrower) a new Form W-8ECI or Form W-8BEN, as applicable, upon the expiration or obsolescence of any previously delivered form and comparable statements in accordance with applicable U.S. laws and regulations and amendments duly executed and completed by such assignee, and to comply from time to time with all applicable U.S. laws and regulations with regard to such withholding tax exemption.

(g) Deliveries by Credit Party. Upon satisfaction of all applicable requirements specified in subsections (a) through (f) above, each Credit Party shall execute and deliver (i) to Collateral Agent, the assignor and the assignee, any consent or release (of all or a portion of the obligations of the assignor) required to be delivered by such Credit Party in connection with the Assignment Agreement, and (ii) to the assignee, if requested, and the assignor, if applicable, an appropriate Note or Notes. After delivery of the new Note or Notes, the assignor's Note or Notes, if any, being replaced shall be returned to Borrower marked "replaced".

(h) Effect of Assignment. Upon satisfaction of all applicable requirements set forth in subsections (a) through (g) above, and any other condition contained in this Section 11.10: (i) the assignee shall become and thereafter be deemed to be a "Lender" for the purposes of this Agreement; (ii) the assignor shall be released from its obligations hereunder to the extent that its interest has been assigned; (iii) in the event that the assignor's entire interest has been assigned; the assignor shall cease to be and thereafter shall no longer be deemed to be a "Lender" and (iv) the signature pages hereto and Schedule 1 hereto shall be automatically amended, without further action, to reflect the result of any such assignment.

(i) Collateral Agent to Maintain Register. Collateral Agent shall maintain at the address for notices referred to in Section 11.5 hereof a copy of each Assignment Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and Borrower, the Guarantors, Collateral Agent and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Loan recorded therein for all purposes of this Agreement. The Register shall be available for inspection by a Credit Party or any Lender at any reasonable time and from time to time upon reasonable prior notice.

Section 11.12 Sale of Participations. Any Lender may, in the ordinary course of its commercial banking business and in accordance with applicable law, at any time sell participations to one or more Eligible Transferees (each a "Participant") in all or a portion of its rights or obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Commitment and the Loans and participations owing to it and the Note, if any, held by it); provided that:

(a) any such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged;

(b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;

(c) the parties hereto shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Loan Documents;

(d) such Participant shall be bound by the provisions of Section 8.4 hereof, and the Lender selling such participation shall obtain from such Participant a written confirmation of its agreement to be so bound; and

(e) no Participant (unless such Participant is itself a Lender) shall be entitled to require such Lender to take or refrain from taking action under this Agreement or under any other Loan Document, except that such Lender may agree with such Participant that such Lender will not, without such Participant's consent, take action of the type described as follows:

(i) increase the portion of the participation amount of any Participant over the amount thereof then in effect, or extend the Commitment Period, without the written consent of each Participant affected thereby; or

(ii) reduce the principal amount of or extend the time for any payment of principal of any Loan, or reduce the rate of interest or extend the time for payment of interest on any Loan, or reduce the commitment fee, without the written consent of each Participant affected thereby.

Each Credit Party agrees that any Lender that sells participations pursuant to this Section 11.12 shall still be entitled to the benefits of Article III hereof, notwithstanding any such transfer; provided, however, that the obligations of Borrower and/or any Guarantor shall not increase as a result of such transfer. .

Section 11.13 Patriot Act Notice. Each Lender and Collateral Agent (for itself and not on behalf of any other party) hereby notifies the Credit Parties that, pursuant to the requirements of the Patriot Act, such Lender and Collateral Agent are required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of the Credit Parties and other information that will allow such Lender or Collateral Agent, as applicable, to identify the Credit Parties in accordance with the Patriot Act. Borrower and/or any Guarantor shall provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by Collateral Agent or a Lender in order to assist Collateral Agent or such Lender in maintaining compliance with the Patriot Act.

Section 11.14 Severability of Provisions; Captions; Attachments. Any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. The several captions to sections and subsections herein are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement. Each schedule or exhibit attached to this Agreement shall be incorporated herein and shall be deemed to be a part hereof.

Section 11.15 Investment Purpose. Each of the Lenders represents and warrants to Borrower and/or any Guarantor that it is entering into this Agreement with the present intention of acquiring any Note issued pursuant hereto (or, if there is no Note, the interest as reflected on the books and records of Agent) for investment purposes only and not for the purpose of distribution or resale, it being understood, however, that each Lender shall at all times retain full control over the disposition of its assets.

Section 11.16 Entire Agreement. This Agreement, any Note and any other Loan Document or other agreement, document or instrument attached hereto or executed on or as of the Closing Date integrate all of the terms and conditions mentioned herein or incidental hereto and supersede all oral representations and negotiations and prior writings with respect to the subject matter hereof.

Section 11.17 Legal Representation of Parties. The Loan Documents were negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement or any other Loan Document to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

Section 11.18 Governing Law; Submission to Jurisdiction; Jury Trial Waiver.

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE OF NEW YORK AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT COLLATERAL AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE COLLATERAL AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH CREDIT PARTY AND EACH LENDER WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 11.18.

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH CREDIT PARTY AND EACH LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH CREDIT PARTY AND EACH LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) SUBJECT TO THE LAST SENTENCE OF THIS SECTION (D) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION 11.18, (I) THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION OR DISPUTE INVOLVING, RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS AND (II) THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION OR DISPUTE INVOLVING, RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS; PROVIDED, THAT NOTHING IN THIS SECTION ___ SHALL AFFECT THE RIGHT OF THE COLLATERAL AGENT OR ANY LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW OR COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY CREDIT PARTY OR ANY COLLATERAL IN ANY OTHER JURISDICTION.

IN WITNESS WHEREOF, the parties have executed and delivered this Debtor in Possession Credit Agreement in New York, New York as of the date first set forth above,

Address: 3 Columbus Circle 16th Floor New York, New York 10019 Attention: CEO	SG BLOCKS, INC. By: /s/ Paul M. Galvin Name: Paul M. Galvin Title: CEO
Address: 3 Columbus Circle 16th Floor New York, New York 10019 Attention: CEO	SG BUILDING BLOCKS, INC, By: /s/ Paul M. Galvin Name: Paul M. Galvin Title: CEO
Address: 3 Columbus Circle 16th Floor New York, New York 10019 Attention: CEO	ENDAXI INFRASTRUCTURE GROUP, INC. By: /s/ Paul M. Galvin Name: Paul M. Galvin Title: CEO
Address: 345 Lorton Avenue Suite 303 Burlingame, CA 94010 Attention: Sean M. McAvoy	HILLAIR CAPITAL INVESTMENTS, L,P, By: __________ Name: __________ Title: __________
Address: 345 Lorton Avenue Suite 303 Burlingame, CA 94010 Attention: Sean M. McAvoy	HILLAIR CAPITAL MANAGEMENT LLC By: __________ Name: __________ Title: __________

IN WITNESS WHEREOF, the parties have executed and delivered this Debtor in Possession Credit Agreement in New York, New York as of the date first set forth above.

Address: 3 Columbus Circle 16th Floor New York, New York 10019 Attention: CEO	SG BLOCKS, INC, By: __________ Name: __________ Title: __________
Address: 3 Columbus Circle 16th Floor New York, New York 10019 Attention: CEO	SG BUILDING BLOCKS, INC. By: __________ Name: __________ Title: __________
Address: 3 Columbus Circle 16th Floor New York, New York 10019 Attention: CEO	ENDAXI INFRASTRUCTURE GROUP, INC. By: __________ Name: __________ Title: __________
Address: 345 Lorton Avenue Suite 303 Burlingame, CA 94010 Attention: Sean M. McAvoy	HILLAIR CAPITAL INVESTMENTS, L.P. By: /s/ Sean M. McAvoy Name: Sean M. McAvoy Title: Managing Member HILLAIR CAPITAL ADVISORS LLC
Address: 345 Lorton Avenue Suite 303 Burlingame, CA 94010 Attention: Sean M. McAvoy	HILLAIR CAPITAL MANAGEMENT LLC By: /s/ Sean M. McAvoy Name: Sean M. McAvoy Title: Managing Member

SCHEDULE 1

	TERM CREDIT COMMITMENT PERCENTAGE	INTERIM ORDER COMMITMENT	FINAL ORDER COMMITMENT
Hillair Capital Investments L.P.	100.0%	As set forth in the DIP Credit Agreement	As set forth in the DIP Credit Agreement, but not to exceed $600,000.00 in the aggregate
[other Lender]			
TOTALS	100%	$304,771.37	$295,228.63

SCHEDULE 3

REAL PROPERTY

County (Ohio)	Borrower/Guarantor	Filing Data

EXHIBIT A
FORM OF
TERM NOTE

Principal Amount: $__________.00 ___ __________, New York
Maturity Date:__________, 2016 October __________, 2015

FOR VALUE RECEIVED, the undersigned, SG BLOCKS, INC., a Delaware corporation ("Borrower"), promises to pay, on the last day of the Commitment Period, as defined in the Credit Agreement (as hereinafter defined), to the order of HILLAIR CAPITAL INVESTMENTS L.P. ("Lender") at the main office of Lender located at 345 Lorton Avenue, Suite 303, Burlingame, California 94010, the aggregate unpaid principal amount of all Term Loans, as defined in the Credit Agreement, made by Lender to Borrower pursuant to Section 2.2(a) of the Credit Agreement in lawful money of the United States of America.

As used herein, "Credit Agreement" means the Debtor in Possession Credit Agreement dated as of October _________, 2015, among Borrower, the Lenders, the Guarantors (as defined therein) and the Collateral Agent (as defined therein), as the same may from time to time be further amended, restated or otherwise modified. Each capitalized term used herein that is defined in the Credit Agreement and not otherwise defined herein shall have the meaning ascribed to it in the Credit Agreement.

Borrower also promises to pay interest on the unpaid principal amount of each Term Loan from time to time outstanding, from the date of such Term Loan until the payment in full thereof, at the rates per annum that shall be determined in accordance with the provisions of Section 2.5(a) of the Credit Agreement. Such interest shall be payable on each date provided for in such Section 2.5(a); provided that interest on any principal portion that is not paid when due shall be payable on demand.

The portions of the principal sum hereof from time to time representing Base Rate Loans, interest owing thereon, and payments of principal and interest of any thereof, shall be shown on the records of Lender by such method as Lender may generally employ; provided that failure to make any such entry shall in no way detract from the obligations of Borrower under this Note.

If this Note shall not be paid at maturity, whether such maturity occurs by reason of lapse of time or by operation of any provision for acceleration of maturity contained in the Credit Agreement, the principal hereof and the unpaid interest thereon shall bear interest, until paid, at a rate per annum equal to the Default Rate (as defined in the Credit Agreement). All payments of principal of and interest on this Note shall be made in immediately available funds.

This Note is the Term Note referred to in the Credit Agreement. Reference is made to the Credit Agreement for a description of the right of the undersigned to anticipate payments hereof, the right of the holder hereof to declare this Note due prior to its stated maturity, and other terms and conditions upon which this Note is issued.

Except as expressly provided in the Credit Agreement, Borrower expressly waives presentment, demand, protest and notice of any kind. This Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of laws provisions.

SG BLOCKS, INC.
a Delaware corporation

By: ______________________________
Name: ______________________________
Title: ______________________________

EXHIBIT G
FORM OF
NOTICE OF LOAN

[Date]_____________________, 201

Hillair Capital Investments, L.P.
345 Lorton Avenue, Suite 303
Burlingame, CA 94010
Attention: Sean M/ McAvoy

Mr. McAvoy:

The undersigned, SG Blocks, Inc., refers to the Debtor in Possession Credit Agreement, dated as of October_______, 2015 (as amended, restated or otherwise modified from time to time, the "Credit Agreement", the terms defined therein being used herein as therein defined), among the undersigned, the Lenders (as defined in the Credit Agreement), and the Collateral Agent (as defined in the Credit Agreement), and hereby gives you notice, pursuant to Section 2.7 of the Credit Agreement that Borrower hereby requests a Loan under the Credit Agreement, and in connection therewith sets forth below the information relating to the Loan (the "Proposed Loan") as required by Section 2.7 of the Credit Agreement:

(a) The Business Day of the Proposed Loan is, __________, 20___ .

(b) The amount of the Proposed Loan is $____________.

The undersigned hereby certifies on behalf of Borrower that the following statements are true on the date hereof, and will be true on the date of the Proposed Loan:

(i) the representations and warranties contained in each Loan Document are correct, before and after giving effect to the Proposed Loan and the application of the proceeds therefrom, as though made on and as of such date;

(ii) no event has occurred and is continuing, or would result from such Proposed Loan, or the application of proceeds therefrom, that constitutes a Default or Event of Default; and

(iii) the conditions set forth in Section 2.7 and Article IV of the Credit Agreement have been satisfied.

SG BLOCKS, INC.

By: ______________________________
Name: ______________________________
Title: ______________________________

EXHIBIT H
FORM OF
COMPLIANCE CERTIFICATE

For Fiscal Quarter ended____________________

THE UNDERSIGNED HEREBY CERTIFIES THAT:

(1) I am the Chief Financial Officer of SG BLOCKS, INC. a Delaware corporation ("SGB");

(2) I am familiar with the terms of that certain Debtor in Possession Credit Agreement, dated as of October____, 2015, among the undersigned, the lenders from time to time named on Schedule 1 thereto (together with their respective successors and assigns, collectively the "Lenders"), and Hillair Capital Management LLC as Collateral Agent (as the same may from time to time be amended, restated or otherwise modified, the "Credit Agreement", the terms defined therein being used herein as therein defined), and the terms of the other Loan Documents, and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and condition of SGB during the accounting period covered by the attached financial statements;

(3) The review described in paragraph (2) above did not disclose, and I have no knowledge of, the existence of any condition or event that constitutes or constituted a Default or Event of Default, at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate;

(4) The representations and warranties made by Borrower contained in each Loan Document are true and correct as though made on and as of the date hereof; and

(5) Set forth on Attachment I hereto are calculations of the financial covenants set forth in Section 5.7 of the Credit Agreement, which calculations show compliance with the terms thereof.

IN WITNESS WHEREOF, I have signed this certificate the ___ day of ___________, 20__.

SG BLOCKS, INC.

By: ______________________________
Name: ______________________________
Title: ______________________________

EXHIBIT I
FORM OF
ASSIGNMENT AND ACCEPTANCE AGREEMENT

This Assignment and Acceptance Agreement (this "Assignment Agreement") between ______________________ (the "Assignor") and_________________________ (the "Assignee") is dated as of________ , 20_. The parties hereto agree as follows:

1 . Preliminary Statement. Assignor is a party to a Debtor in Possession Credit Agreement, dated as of October________, 2015 (as the same may from time to time be amended, restated or otherwise modified, the "Credit Agreement"), among SG BLOCKS, INC. ("Borrower"), the lenders named on Schedule 1 thereto (together with their respective successors and assigns, collectively, the "Lenders" and, individually, each a "Lender"), the GUARANTORS (as defined therein) and HILLAIR CAPITAL MANAGEMENT LLC, as "Collateral Agent"). Capitalized terms used herein and not otherwise defined herein shall have the meanings attributed to them in the Credit Agreement.

2 . Assignment and Assumption. Assignor hereby sells and assigns to Assignee, and Assignee hereby purchases and assumes from Assignor, an interest in and to Assignor's rights and obligations under the Credit Agreement, effective as of the Assignment Effective Date (as hereinafter defined), equal to the percentage interest specified on Annex 1 hereto (hereinafter, the "Assigned Percentage") of Assignor's right, title and interest in and to (a) the Commitment, (b) any Loan made by Assignor that is outstanding on the Assignment Effective Date, (c) any Note delivered to Assignor pursuant to the Credit Agreement, and (d) the Credit Agreement and the other Related Writings. After giving effect to such sale and assignment and on and after the Assignment Effective Date, Assignee shall be deemed to have one or more Applicable Commitment Percentages under the Credit Agreement equal to the Applicable Commitment Percentages set forth in subpart II.A on Annex 1 hereto and an Assigned Amount as set forth on subpart I.B. of Annex 1 hereto (hereinafter, the "Assigned Amount").

3. Assignment Effective Date. The Assignment Effective Date (the "Assignment Effective Date") shall be **[______________, ________]** (or such other date agreed to by Collateral Agent). On or prior to the Assignment Effective Date, Assignor shall satisfy the following conditions:

(a) receipt by Collateral Agent of this Assignment Agreement, including Annex 1 hereto, properly executed by Assignor and Assignee and accepted and consented to by Collateral Agent and, if necessary pursuant to the provisions of Section 11.10(b) of the Credit Agreement, by Borrower;

(b) receipt by Collateral Agent from Assignor of a fee of Three Thousand Five Hundred Dollars ($3,500), if required by Section 11.10(d) of the Credit Agreement;

(c) receipt by Collateral Agent from Assignee of an administrative questionnaire, or other similar document, which shall include (i) the address for notices under the Credit Agreement, (ii) the address of its Lending Office, (iii) wire transfer instructions for delivery of funds by Collateral Agent, (iv) and such other information as Collateral Agent shall request; and

(d) receipt by Collateral Agent from Assignor or Assignee of any other information required pursuant to Section 11.10 of the Credit Agreement or otherwise necessary to complete the transaction contemplated hereby.

4. Payment Obligations. In consideration for the sale and assignment of Loans hereunder, Assignee shall pay to Assignor, on the Assignment Effective Date, the amount agreed to by Assignee and Assignor. Any interest, fees and other payments accrued prior to the Assignment Effective Date with respect to the Assigned Amount shall be for the account of Assignor. Any interest, fees and other payments accrued on and after the Assignment Effective Date with respect to the Assigned Amount shall be for the account of Assignee. Each of Assignor and Assignee agrees that it will hold in trust for the other party any interest, fees or other amounts which it may receive to which the other party is entitled pursuant to the preceding sentence and to pay the other party any such amounts which it may receive promptly upon receipt thereof.

5 . Credit Determination; Limitations on Assignor's Liability. Assignee represents and warrants to Assignor, Borrower, Collateral Agent and the Lenders (a) that it is capable of making and has made and shall continue to make its own credit determinations and analysis based upon such information as Assignee deemed sufficient to enter into the transaction contemplated hereby and not based on any statements or representations by Assignor; (b) Assignee confirms that it meets the requirements to be an assignee as set forth in Section 10.10 of the Credit Agreement; (c) Assignee confirms that it is able to fund the Loans and the Letters of Credit as required by the Credit Agreement; (d) Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement and the Related Writings are required to be performed by it as a Lender thereunder; and (e) Assignee represents that it has reviewed each of the Loan Documents and by its signature to this Assignment Agreement, agrees to be bound by and subject to the terms and conditions of any such Intercreditor Agreement as if it were an original party thereto. It is understood and agreed that the assignment and assumption hereunder are made without recourse to Assignor and that Assignor makes no representation or warranty of any kind to Assignee and shall not be responsible for (i) the due execution, legality, validity, enforceability, genuineness, sufficiency or collectability of the Credit Agreement or any Related Writings, (ii) any representation, warranty or statement made in or in connection with the Credit Agreement or any of the Related Writings, (iii) the financial condition or creditworthiness of Borrower and/or any Guarantor, (iv) the performance of or compliance with any of the terms or provisions of the Credit Agreement or any of the Related Writings, (v) the inspection of any of the property, books or records of Borrower and/or any Guarantor, or (vi) the validity, enforceability, perfection, priority, condition, value or sufficiency of any collateral securing or purporting to secure the Loans. Neither Assignor nor any of its officers, directors, employees, agents or attorneys shall be liable for any mistake, error of judgment, or action taken or omitted to be taken in connection with the Loans, the Credit Agreement or the Related Writings, except for its or their own bad faith or willful misconduct. Assignee appoints Collateral Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to Collateral Agent by the terms thereof.

6 . Indemnity. Assignee agrees to indemnify and hold Assignor harmless against any and all losses, cost and expenses (including, without limitation, attorneys' fees) and liabilities incurred by Assignor in connection with or arising in any manner from Assignee's performance or non-performance of obligations assumed under this Assignment Agreement.

7. Subsequent Assignments. After the Assignment Effective Date, Assignee shall have the right, pursuant to Section 11.10 of the Credit Agreement to assign the rights which are assigned to Assignee hereunder, provided that (a) any such subsequent assignment does not violate any of the terms and conditions of the Credit Agreement, any of the Related Writings, or any law, rule, regulation, order, writ, judgment, injunction or decree and that any consent required under the terms of the Credit Agreement or any of the Related Writings has been obtained, (b) the assignee under such assignment from Assignee shall agree to assume all of Assignee's obligations hereunder in a manner satisfactory to Assignor, and (c) Assignee is not thereby released from any of its obligations to Assignor hereunder.

8. Reductions of Aggregate Amount of Commitments. If any reduction in the Total Commitment occurs between the date of this Assignment Agreement and the Assignment Effective Date, the percentage of the Total Commitment assigned to Assignee shall remain the percentage specified in Section 1 hereof and the dollar amount of the Commitment of Assignee shall be recalculated based on the reduced Total Commitment.

9. Acceptance of Agent; Notice by Assignor. This Assignment Agreement is conditioned upon the acceptance and consent of Collateral Agent and, if necessary pursuant to Section 11.10 of the Credit Agreement, upon the acceptance and consent of Borrower; provided that the execution of this Assignment Agreement by Collateral Agent and, if necessary, by Borrower is evidence of such acceptance and consent.

10. Entire Agreement. This Assignment Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

11. Governing Law. This Assignment Agreement shall be governed by the laws of the State of New York, without regard to conflicts of laws.

12. Notices. Notices shall be given under this Assignment Agreement in the manner set forth in the Credit Agreement. For the purpose hereof, the addresses of the parties hereto (until notice of a change is delivered) shall be the address set forth under each party's name on the signature pages hereof.

13. Counterparts. This Assignment Agreement may be executed in any number of counterparts, by different parties hereto in separate counterparts and by facsimile signature, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

14. <u>JURY TRIAL WAIVER</u>. EACH OF THE UNDERSIGNED, TO THE EXTENT PERMITTED BY LAW, WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG AGENT, ANY OF THE LENDERS, ANY OF THE BORROWERS, AND/OR ANY OF THE GUARANTORS, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG EACH OF THEM IN CONNECTION WITH THIS INSTRUMENT OR ANY NOTE OR OTHER AGREEMENT, INSTRUMENT OR DOCUMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH OR THE TRANSACTIONS RELATED HERETO.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Agreement by their duly authorized officers as of the date first above written.

ASSIGNOR:

Address:
Attn: ______________________
Phone: ______________________
Fax: ______________________

By: ______________________
Name: ______________________
Title: ______________________

ASSIGNEE:

Address:
Attn: ______________________
Phone: ______________________
Fax: ______________________

By: ______________________
Name: ______________________
Title: ______________________

Accepted and Consented to this____ day of ___, 20___:

HILLAIR CAPITAL MANAGEMENT LLC,

As Collateral Agent

By: ______________________
Name: ______________________
Title: ______________________

Accepted and Consented to this____day of ___, 20___:

[INSERT SIGNATURE OF BORROWER IF REQUIRED]

SG BLOCKS, INC.

By: ______________________
Name: ______________________
Title: ______________________

ANNEX 1
TO
TO ASSIGNMENT AND ACCEPTANCE AGREEMENT

On and after the Assignment Effective Date, after giving effect to all other assignments being made by Assignor on the Assignment Effective Date, the Commitment of Assignee, and, if this is less than an assignment of all of Assignor's interest, Assignor, shall be as follows:

I. INTEREST BEING ASSIGNED TO ASSIGNEE

A. Term Credit Commitment

Assigned Amount	$0.00

II. ASSIGNEE'S COMMITMENT (as of the Assignment Effective Date)

A. Term Credit Commitment

Applicable Commitment Percentage of Term Credit Commitment	0%
Assignee's amount of the Term Credit Commitment	$0.00

EXHIBIT J
FORM OF
REAFFIRMATION OF GUARANTY

REAFFIRMATION OF GUARANTY

DATED: OCTOBER____, 2015

The undersigned, being a guarantor of certain indebtedness, obligations and liabilities of SG Blocks, Inc., pursuant to the provisions of that certain: (a) Subsidiary Guarantee dated August 5, 2015, executed and delivered by the SG Building Blocks, Inc., a Delaware corporation ("SG Building") and Endaxi Infrastructure Group, Inc., a Delaware corporation ("Endaxi" and together with SG Building, the "Guarantors" and each a 'Guarantor") in favor of the lenders listed therein; (b) Subsidiary Guarantee dated April 10, 2014, executed and delivered by SG Building in favor of the lenders listed therein; (c) Security Agreement dated August 5, 2015, executed and delivered by SG Blocks, Inc. and the Guarantors in favor of Hillair Capital Investments L.P.; (d) Security Agreement dated April 10, 2014, executed and delivered by SG Blocks, Inc. and SG Building in favor of the lenders listed therein, as the same may be further amended, amended or restated, or modified from time to time (the "Guaranty Documents"), including, without limitation, the waivers and releases by the Guarantor contained therein. The undersigned hereby agree that the terms and provisions of the Guaranty Documents are ratified and confirmed and remain in full force and effect; and all of such Guarantor's obligations, liabilities and agreements under and pursuant to the Guaranty Documents remain unmodified and in full force and effect. The undersigned acknowledges that it has read and understands this Reaffirmation of Guaranty and that it has had the assistance of legal counsel in connection with such review and prior to executing this Reaffirmation of Guaranty.

IN WITNESS WHEREOF, the undersigned has caused this Reaffirmation of Guaranty to be duly executed and delivered in______________, New York as of the day and year first above written.

Date: October____ , 2015.

SG BUILDING BLOCKS, INC.

By: ____________________
Name: ____________________
Title: ____________________

ENDAXI INFRASTRUCTURE GROUP, INC.

By: ____________________
Name: ____________________
Title: ____________________

Exhibit 4.2

Execution Version

SENIOR SECURITY AGREEMENT

Dated as of October 15, 2015

among

SG BLOCKS, INC.

SG BUILDING BLOCKS, INC.

ENDAXI INFRASTRUCTURE GROUP, INC.

as the Grantors

and

HILLAIR CAPITAL MANAGEMENT LLC

as the Grantee

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This SENIOR SECURITY AGREEMENT, dated as of October 15, 2015 (this "Agreement"), among SG BLOCKS, INC., a Delaware corporation and debtor in possession, located at 115 W. 18th Street, New York, New York 10011 ("SGB"), SG BUILDING BLOCKS, INC., a Delaware corporation and debtor in possession located at 115 W. 18th Street, New York, New York 10011 (" SG Building"), ENDAXI INFRASTRUCTURE GROUP, INC., a Delaware corporation and debtor in possession located at 115 W. 18th Street, New York, New York 10011 (" Endaxi" and collectively with SGB and SG Building, the "Grantors" and each a "Grantor"), and HILLAIR CAPITAL MANAGEMENT LLC, a Delaware limited liability company, located at 345 Lorton Avenue, Suite 303, Burlingame, California 94010, in its capacity as grantee (together with its successors and assigns, the "Grantee").

RECITALS:

WHEREAS, on October 15, 2015, (the "Petition Date"), the Grantors each filed a voluntary petition for relief under title 11 of chapter 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the "Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and

WHEREAS, from and after the Petition Date, each Grantor continues to operate its business and properties as debtor and debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code; and

WHEREAS, the Grantors have an immediate need for funds to continue to operate their respective businesses and properties , and each Grantor has not been able to obtain sufficient credit or to incur sufficient debt from any other source on the same or better terms; and

WHEREAS, the Grantors, entered into that certain Debtor in Possession Credit Agreement, dated as of the date hereof (as may be amended, restated, supplemented or otherwise modified from time to time, the "DIP Credit Agreement"), with the Grantee as a Collateral Agent and the Lenders listed therein (as defined in the DIP Credit Agreement);

WHEREAS, the Grantors will derive substantial direct and indirect benefits from the financial accommodations provided by the Lenders under the DIP Credit Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to provide such financial accommodations under the DIP Credit Agreement that the Grantor shall have executed and delivered this Agreement to the Grantee, in its capacity as Collateral Agent for the benefit of the Lenders; and

WHEREAS, in consideration of the extensions of credit and other accommodations of the Grantee and Lenders as set forth in the DIP Credit Agreement, each of the Grantors has agreed to secure its Obligations under the DIP Loan Documents (as each such term is defined below) as set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the Grantors and the Grantee agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 General Definitions.

In this Agreement, the following terms shall have the following meanings:

"Account Debtor" shall mean each Person who is obligated on a Receivable or any Supporting Obligation related thereto.

"Accounts" shall mean all accounts, accounts receivable, health-care-insurance receivables, credit card receivables, contract rights, instruments, documents, chattel paper, tax refunds from foreign, federal, state or local governments and all obligations in any form including those arising out of the sale or lease of goods or the rendition of services by any Grantor; all guaranties, letters of credit and other security and supporting obligations for any of the above; and all books and records including computer programs, tapes and data processing software) evidencing an interest in or relating to the above; all winnings in a lottery or other game of chance operated by a governmental unit or Person licensed to operate such game by a governmental unit and all rights to payment therefrom; and all "accounts" as the same is now or hereinafter defined in the UCC.

"Agreement" shall have the meaning set forth in the preamble.

"Assigned Agreements" shall mean all agreements and contracts to which any Grantor is a party as of the date hereof, or to which any Grantor becomes a party after the date hereof, including, without limitation, each Material Contract.

"Avoidance Actions" shall mean avoidance actions of the Grantors under Chapter 5 of the Bankruptcy Code (and the proceeds thereof).

"Bankruptcy Code" shall have the meaning set forth in the recitals. "Bankruptcy Court" shall have the meaning set forth in the recitals. "Cash Proceeds" shall have the meaning assigned in Section 7.08.

"Certificated Security" shall mean "certificated security" as defined in Article 8 of the UCC.

"Chattel Paper" shall mean (i) all "chattel paper" as defined in Article 9 of the UCC, and (ii) shall include, without limitation, "electronic chattel paper" and "tangible chattel paper", as each term is defined in Article 9 of the UCC.

"Collateral" shall have the meaning assigned in Section 2.01(c).

"Collateral Records" shall mean books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items to any of the fore-going that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

"Collateral Support" shall mean all real and personal property assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a Lien or security interest in such real or personal property.

"Commercial Tort Claims" shall mean (i) all "commercial tort claims" as defined in Article 9 of the UCC, and (ii) shall include, without limitation, all commercial tort claims listed on Schedule 4.10.

"Commodities Accounts" shall mean (i) all "commodity accounts" as defined in Article 9 of the UCC, and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.04 under the heading "Commodities Accounts".

"Controlled Foreign Corporation" shall mean "controlled foreign corporation" as defined in the Tax Code.

"Copyright Licenses" shall mean any and all agreements providing for the granting of any right in or to Copyrights (whether such Grantor is the licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.09(B).

"Copyrights" shall mean all United States and foreign copyrights (including Community designs), including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications referred to in Schedule 4.09(A), (ii) all extensions and renewals thereof, (iii) all rights corresponding thereto throughout the world, (iv) all rights to sue for past, present and future infringements thereof and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

"Deposit Accounts" shall mean (i) all "deposit accounts" as defined in Article 9 of the UCC, and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.04 under the heading "Deposit Accounts".

"DIP Credit Agreement" shall have the meaning set forth in the recitals.

"DIP Loan Documents" shall mean the DIP Credit Agreement and the other Loan Documents.

"Effective Endorsement" shall mean "effective endorsement" as defined in Article 8 of the UCC.

"Entitlement Orders" shall mean "entitlement orders" as defined in Article 8 of the UCC.

“Equipment” shall mean: (i) all “equipment” as defined in Article 9 of the UCC, (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC), and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

“Event of Default” shall have the meaning set forth in the DIP Credit Agreement.

“Excluded Accounts” shall mean: (i) Payroll Accounts, (ii) escrow accounts, and (iii) trust accounts, in each case entered into in the ordinary course of business and consistent with prudent business conduct, where such Grantor holds the funds exclusively for the benefit of an unaffiliated third party.

“General Intangibles” shall mean (i) all “general intangibles” as defined in Article 9 of the UCC, including “payment intangibles” also as defined in Article 9 of the UCC, and (ii) shall include, without limitation, all interest rate or currency protection or hedging arrangements, all tax refunds, all licenses, permits, concessions and authorizations, all Assigned Agreements and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

“Goods” shall mean (i) all “goods” as defined in Article 9 of the UCC, and (ii) shall include, without limitation, all Inventory and Equipment (in each case, regardless of whether characterized as goods under the UCC).

“Grantors” shall have the meaning set forth in the preamble.

“Grantee” shall have the meaning set forth in the preamble, and shall also include all others Persons who may become a Lender from time to time under the DIP Credit Agreement.

“Insurance” shall mean (i) all insurance policies covering any or all of the Collateral (regardless of whether the Grantee is the loss payee thereof), and (ii) any key man life insurance policies maintained or obtained by any Grantor (regardless of whether the Grantee is the loss payee thereof).

“Intellectual Property” shall mean, collectively, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets and the Trade Secret Licenses.

“Inventory” shall mean: (i) all “inventory” as defined in Article 9 of the UCC and (ii) all Goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, (iii) all raw materials, work in process, finished Goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of inventory or otherwise used or consumed in any Grantor’s business, (iv) all Goods in which the Grantor has rights in mass or a joint or other interest or right of any kind, (v) all Goods which are returned to or repossessed by any Grantor, (vi) all computer programs embedded in any Goods, and (vii) all accessions or products thereto and/or products of or with respect to any of the foregoing (in each case, regardless of whether characterized as inventory under the UCC).

"Investment Accounts" shall mean the Securities Accounts, Commodities Accounts and Deposit Accounts.

"Investment Related Property" shall mean (i) all "investment property" (as such term is defined in Article 9 of the UCC), and (ii) all Pledged Equity Interests, Pledged Debt, the Investment Accounts and certificates of deposit (in each case, regardless of whether classified as investment property under the UCC).

"IP Security Agreement" shall mean each of the Trademark Security Agreement, the Copyright Security Agreement and the Patent Security Agreement.

"Lien" shall mean (i) any lien, mortgage, pledge, 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 in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and, (ii) in the case of Pledged Equity Interests, any purchase option, call or similar right of a third party with respect to such Pledged Equity Interests.

"Material Contract" means any contract or other arrangement to which any Grantor or any of its Subsidiaries, if any, is a party (other than the DIP Loan Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

"Negotiable Document" shall mean a document of title which is negotiable under Section 7-104 of the UCC.

"Payment In Full" shall mean in relation to the Obligations, the indefeasible payment in full in cash of all obligations (other than indemnification and reimbursement obligations in respect of which no claim for payment has been asserted by the Person entitled thereto but including all reimbursement liabilities to the extent then due and payable) of the Grantors owing to the Grantee or the Lenders.

"Patent Licenses" shall mean all agreements providing for the granting of any right in or to Patents (whether the Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.09(D).

"Patents" shall mean all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application referred to in Schedule 4.09(C), (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all rights corresponding thereto throughout the world, (iv) all inventions and improvements described therein, (v) all rights to sue for past, present and future infringements thereof, (vi) all licenses, claims, damages, and proceeds of suit arising therefrom, and (vi) all Proceeds of any of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

"Payroll Account" shall mean any Deposit Account of any Grantor that is used by such Grantor solely as a payroll account for employees of such Grantor; provided that, at no time, shall the aggregate amount contained in all such accounts of the Grantors exceed the total amount of payroll payable to employees by the Grantors within the immediately succeeding thirty (30) days.

"Petition Date" shall have the meaning set forth in the recitals.

"Pledge Supplement" shall mean any supplement to this Agreement in form and substance reasonably satisfactory to Grantee.

"Pledged Debt" shall mean all Indebtedness owed to the Grantors, including, without limitation, all Indebtedness listed on Schedule 4.04 under the heading "**Pledged Debt**", issued by the obligors named therein, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

"Pledged Equity Interests" shall mean all Pledged Stock.

"Pledged Stock" shall mean all shares of capital stock owned by any Grantor, including, without limitation, all shares of capital stock listed on Schedule 4.04 under the heading "**Pledged Stock**", and the certificates, if any, representing such shares and any interest of such Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

"Proceeds" shall mean: (i) all "proceeds" as defined in Article 9 of the UCC, (ii) all payments or distributions made with respect to any Investment Related Property, and (ii) whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

"Receivables" shall mean all rights to payment, whether or not earned by performance, for Goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation, all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of any Grantor's rights, if any, in any Goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

"Receivables Records" shall mean: (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of any Grantor or any computer bureau or agent from time to time acting for any Grantor or otherwise, (iii) all evidence of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto, and (v) all other written or nonwritten forms of information related in any way to the foregoing or any Receivable.

"Securities Accounts" shall mean (i) all "securities accounts" as defined in Article 8 of the UCC, and (ii) shall include, without limitation, the New Stream Securities Account and all other accounts listed on Schedule 4.04 under the heading "**Securities Accounts**".

"Security Entitlement" shall mean a "security entitlement" as defined in Article 8 of the UCC.

"Security Interests" shall have the meaning assigned in Section 2.01.

"Tax Code" shall mean the United States Internal Revenue Code of 1986.

"Trade Secret Licenses" shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether such Grantor is the licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.09(G).

"Trade Secrets" shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, including but not limited to: (i) the right to sue for past, present and future misappropriation or other violation of any Trade Secret, and (ii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

"Trademark Licenses" shall mean any and all agreements providing for the granting of any right in or to Trademarks (whether such Grantor is the licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.09(F).

"Trademarks" shall mean all United States, state and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, internet domain names, trade styles, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and General Intangibles of a like nature, all registrations and applications for any of the foregoing including, but not limited to the registrations and applications referred to in Schedule 4.09(E), all extensions or renewals of any of the foregoing, all of the goodwill of the business connected with the use of and symbolized by the foregoing, the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill, and all proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

"Uncertificated Security" shall mean "uncertificated security" as defined in Article 8 of the UCC.

"United States" shall mean the United States of America.

SECTION 1.02 Definitions; Interpretation.

All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the DIP Credit Agreement or, if not defined herein or in the DIP Credit Agreement, in the UCC (regardless of whether such terms are capitalized in the UCC). References to "Sections", "Exhibits", "Schedules" and "Supplements" shall be to Sections, Exhibits, Schedules and Supplements, as the case may be, of or to this Agreement unless otherwise specifically provided and shall include any amendments, modifications, restatements or supplements thereto. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. If any conflict or inconsistency exists between this Agreement and the DIP Credit Agreement, the DIP Credit Agreement shall govern. All references herein to provisions of the UCC, the Bankruptcy Code, the Tax Code or any other statute shall include all successor provisions under any subsequent version or amendment to any Article of the UCC or any section or provision of the Bankruptcy Code, Tax Code or any other such statute. Any references herein to any agreement or contract shall include any amendments, modifications, restatements or supplements thereto.

ARTICLE II

GRANT OF SECURITY

SECTION 2.01 Grant of Security.

(a) Each Grantor hereby grants to the Grantee a senior, first priority security interest and continuing senior and priming lien on all of such Grantor's right, title and interest in, to and under the Collateral.

(b) The Liens granted hereunder to secure the Obligations are referred to herein as the "Security Interests".

(c) "Collateral" shall mean all real and personal property of the Grantors in-cluding, but not limited to the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located:

1) Accounts;
2) Chattel Paper;
3) Documents;
4) Equipment;
5) General Intangibles;
6) Goods;
7) Instruments;
8) Insurance;
9) Intellectual Property;
10) Inventory;
11) Investment Related Property;
12) Letter of Credit Rights;
13) Money;
14) Receivables and Receivable Records;
15) Commercial Tort Claims;
16) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and
17) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

SECTION 2.02 Certain Limited Exclusions.

Notwithstanding anything herein to the contrary, in no event shall the Security Interest granted under Section 2.01 attach to: (a) any lease, license, Receivable, General Intangible, Investment Account, contract, property rights (including Intellectual Property) or agreement to which such Grantor is a party or any of its rights or interests thereunder if and for so long as the grant of such Security Interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of the Grantor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, Receivable, General Intangible, Investment Account, contract property rights or agreement (other than to the extent that any such result would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC, the provisions of the Bankruptcy Code or any other applicable law or principles of equity); provided however that such Security Interest shall attach immediately at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such lease, license, Receivable, General Intangible, Investment Account, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above; (b) any of the outstanding capital stock of a Controlled Foreign Corporation in excess of 65% of the voting power of all classes of capital stock of such Controlled Foreign Corporation entitled to vote; provided that immediately (and without the requirement of any further action on the part of the Grantee) upon any amendment of the Tax Code to allow the pledge of a greater percentage of the voting power of capital stock in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and the Security Interest granted by the Grantor shall attach to, such greater percentage of capital stock of each Controlled Foreign Corporation; or (c) any Excluded Accounts.

ARTICLE III

SECURITY FOR OBLIGATIONS; GRANTOR REMAINS LIABLE

SECTION 3.01 Security for Obligations.

This Agreement secures, and the Collateral is collateral security for, the prompt and complete Payment In Full or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due and payable but for the operation of the section 362(a) of the Bankruptcy Code), of all Obligations with respect to the Grantors in the case of the Security Interest of the Grantee.

SECTION 3.02 Grantors' Continuing Liability Under Collateral.

Notwithstanding anything herein to the contrary: (i) the Grantors shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Grantee, (ii) the Grantors shall remain liable under each of the contracts and agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Stock, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and the Grantee shall not have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto or hereto, nor shall the Grantee have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Stock, and (iii) the exercise by the Grantee of any of its rights hereunder or under any other DIP Loan Document shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES AND COVENANTS

SECTION 4.01 Generally.

(a) Representations and Warranties. Each of the Grantors hereby represents and warrants that:

(i) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral and, as to all Collateral whether now existing or hereafter acquired, will continue to own or have such rights in each item of the Collateral, in each case free and clear of any and all Liens, including, without limitation, Liens arising as a result of the Grantor becoming bound (as a result of merger or otherwise) as debtor under a security agreement entered into by another Person;

(ii) (a) SGB is a Delaware corporation, (b) the jurisdiction of incorpo- ration of SGB is Delaware, (c) its charter identification number is ________________, (d) the jurisdiction where the chief executive office or its sole place of business is, and for the one-year period preceding the date hereof has been, located at 3 Columbus Circle, 16th Floor, New York, New York 10019, (e) SG Building is a Delaware corporation, (f) the jurisdiction of incorporation of SG Building is Delaware, (g) its charter identification number is _________________, (h) the jurisdiction where the chief executive office or its sole place of business is, and for the one-year period preceding the date hereof has been, located at 3 Columbus Circle, 16th Floor, New York, New York 10019, (i) Endaxi is a Delaware corporation, (j) the jurisdiction of incorporation of Endaxi is Delaware, (k) its charter identification number is_______________, and (1) the jurisdiction where the chief executive office or its sole place of business is, and for the one-year period preceding the date hereof has been, located at 3 Columbus Circle, 16th Floor, New York, New York 10019;

(iii) the full legal name of each Grantor is as set forth on the signature page hereto and it has not done in the last five (5) years, and does not do, business under any other legal name;

(iv) except as provided on Schedule 4.01(A), each Grantor has not changed its name, jurisdiction of incorporation, chief executive office or sole place of its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years;

(v) each Grantor has not become bound (whether as a result of merger or otherwise) as a debtor under a security agreement entered into by another Person, which has not heretofore been terminated other than the agreements identified on Schedule 4.01(B);

(vi) other than any financing statements filed in favor of the Grantee, no effective UCC financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for financing statements for which proper termination statements have been delivered to the Grantee at least five (5) Business Days prior to the Closing Date for filing as set forth on Schedule 4.01(C);

(vii) the security interests granted to the Grantee hereunder constitute valid and continuing senior, first priority, priming Liens and no authorization, approval (other than entry of the Financing Orders by the Bankruptcy Court) or other action by, and no notice to or filing with, any Governmental Authority is required for either (a) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Grantee hereunder, or (b) the exercise by the Grantee of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except as may be required, in connection with the disposition of any Investment Related Property, by laws generally affecting the offering and sale of Securities;

(viii) all actions and consents, including all filings, notices, registrations and recordings necessary or desirable for the exercise by the Grantee of the rights provided for in this Agreement or the exercise of remedies in respect of the Collateral have been made or obtained (other than entry of the Financings Orders by the Bankruptcy Court); and

(ix) each Grantor has been duly incorporated as a corporation solely under the laws of Delaware and remains duly existing as such. The Grantors have not filed any certificates of domestication, transfer or continuance in any other jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees

(i) the Liens, security interests and claims of all other holders of Liens, security interests or claims on, in, or against the Grantor (except to the extent expressly set forth in the Financing Orders), are subordinated and junior to the Liens and Security Interests granted hereunder and under the Financing Orders to the Grantee;

(ii) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral and the Grantor shall defend the Collateral and the Grantee's Liens on and Security Interests in the Collateral (including, but not limited to, the senior priority thereof) against all Persons (other than the Grantee) at any time claiming any interest therein;

(iii) it shall not produce, use or permit any Collateral to be used unlawfully in any material respect or in violation of any provision of this Agreement or in violation in any material respect of any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(iv) it shall not effect any change: (a) in the Grantor's legal name, (b) in the location of the Grantor's chief executive office, (c) in the Grantor's identity or or-ganizational structure, (d) in the Grantor's Federal Taxpayer Identification Number or organizational identification number, if any, or (e) in the Grantor's jurisdiction of incorporation (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), unless such change is permitted under the DIP Credit Agreement and Financing Orders and until it shall have given the Grantee not less than thirty (30) days' prior written notice (in the form of an Officers' Certificate) of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Grantee may reasonably request and it shall have taken all actions necessary or advisable, or as directed by the Grantee, to maintain the continuous validity, perfection and the same or better priority of the Security Interest of the Grantee in the Collateral, if applicable. The Grantor agrees, as soon as practicable, to provide the Grantee with certified Organizational Documents reflecting any of the changes described in the preceding sentence. The Grantor also agrees to (a) promptly notify the Grantee of any change in the location of any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral is located (including the establishment of any such new office or facility) and (b) take all actions necessary or advisable, or as directed by the Grantee, as a result of any of the foregoing changes, to maintain the continuous validity, perfection and the same or better priority of the Grantee's Security Interest in the Collateral intended to be granted and agreed to hereby;

(v) immediately upon the Grantor or any officer of the Grantor obtaining knowledge thereof, it shall promptly notify the Grantee in writing of any event, including, without limitation, the levy of any legal process against the Collateral or any material portion thereof, that could reasonably be expected to have a Material Adverse Effect on the value of the Collateral or any material portion thereof, the ability of the Grantor or the Grantee to dispose of the Collateral or any material portion thereof, or the rights and remedies of the Grantee in relation thereto;

(vi) it shall not take or permit any action (other than any action taken by, or at the direction of, the Grantee) which could reasonably be expected to impair the Grantee's rights in, or materially diminish the value, of the Collateral.

SECTION 4.02 Equipment and Inventory.

(a) Representations and Warranties. Each Grantor represents and warrants

(i) all of the Equipment and Inventory included in the Collateral is only at the locations specified in Schedule 4.02;

(ii) except for exceptions to the following that could not reasonably be expected to have a Material Adverse Effect, any Goods now or hereafter produced by the Grantor included in the Collateral have been and will be produced in compliance with the requirements of the Fair Labor Standards Act and all other applicable law; and

(iii) none of the Inventory or Equipment individually or in the aggregate with a fair market value in excess of $25,000 is in the possession of an issuer of a Negotiable Document therefor or otherwise in the possession of a bailee or a warehouseman, other than inventory located at ConGlobal Industries, Inc.

(b) Covenants and Agreements. Each Grantor covenants and agrees that:

(i) it shall keep the Equipment, Inventory and any Documents evidencing any Equipment and Inventory in the locations specified in Schedule 4.02 unless it shall have (a) notified the Grantee in writing, by executing and delivering to the Grantee a completed Pledge Supplement together with all Supplements to Schedules thereto, prior to any change in locations, identifying such new locations and providing such other information in connection therewith as the Grantee may reasonably request and (b) taken all actions necessary or advisable, or as directed by the Grantee, to maintain the continuous validity, perfection and the same or better priority of the Grantee's security interest in the Collateral intended to be granted and agreed to hereby, or to enable the Grantee to exercise and enforce its rights and remedies hereunder, with respect to such Equipment and Inventory; provided, however, that the foregoing shall not apply with respect to any Equipment or Inventory which, in the ordinary course of business, has been removed temporarily from any of the locations specified in Schedule 4.02 and transported to another location for purposes of repair or servicing or similar activity;

(ii) it shall keep materially correct and accurate records of the Inventory, itemizing and describing the kind, type and quantity of Inventory, the Grantor's cost therefor and (where applicable) the current list prices for the Inventory, in each case, as is customarily maintained under similar circumstances by Persons of established reputation engaged in a similar business, and in any event in conformity with GAAP;

(iii) it shall not deliver any Document evidencing any Equipment or Inventory individually or in the aggregate with a fair market value in excess of $25,000 to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the Grantee;

(iv) if any Equipment or Inventory individually or in the aggregate with a fair market value in excess of $25,000 is in possession or control of any third party, upon the request of the Grantee the Grantor shall join with the Grantee in promptly notifying the third party of the Grantee's security interest and obtaining an acknowledgment from the third party that it is holding the Equipment and Inventory for the benefit of the Grantee; provided, however, that the foregoing shall not apply with respect to any Equipment or Inventory which, in the normal course of business, is in the possession or control of a third party for purposes of repair or servicing or similar activity; and

(v) with respect to any item of Equipment which is covered by a certificate of title under a statute of any jurisdiction under the law of which indication of a security interest on such certificate is required as a condition of perfection thereof, upon the request of the Grantee, it shall promptly: (A) provide information with respect to any such Equipment (excluding Equipment which is located in a foreign jurisdiction), (B) execute and file with the registrar of motor vehicles or other appropriate authority in such jurisdiction an application or other document requesting the notation or other indication of the security interest created hereunder on such certificate of title, and (C) deliver to the Grantee copies of all such applications or other documents filed during such calendar quarter and copies of all such certificates of title issued during such calendar quarter indicating the security interest created hereunder in the items of Equipment covered thereby.

SECTION 4.03 Receivables.

(a) Representations and Warranties. Each Grantor represents and warrants

(i) to the knowledge of the Grantor, each Receivable constituting Collateral: (a) is the legal, valid and binding obligation of the Account Debtor in respect thereof, representing an unsatisfied obligation of such Account Debtor, (b) is enforceable against such Account Debtor in accordance with its terms, (c) is not and will not be subject to any setoffs, defenses, taxes, counterclaims (except with respect to consignments, refunds, returns and allowances in the ordinary course of business with respect to damaged merchandise), and (d) except for exceptions that could not reasonably be expected to have a Material Adverse Effect, is and will be in compliance with all applicable laws, whether federal, state, local or foreign;

(ii) no Account Debtor in respect of any Receivable in excess of $[25,000] individually or $[75,000] in the aggregate is the government of the United States, any agency or instrumentality thereof or any foreign sovereign. Subject to Section 2.02, no Receivable in excess of $[25,000] individually or $[75,000] in the aggregate requires the consent of the Account Debtor in respect thereof in connection with the pledge hereunder, except any consent which has been obtained prior to the date hereof;

(iii) no Receivable constituting Collateral is evidenced by, or constitutes, an Instrument or Chattel Paper which has not been delivered to, or otherwise subjected to the control of, the Grantee to the extent required by, and in accordance with Section 4.03(c); and

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees

(i) it shall keep and maintain at its own cost and expense materially complete records of the Receivables, in form reasonably satisfactory to the Grantee, including, but not limited to, the originals of all documentation with respect to all Receivables and records of all payments received and all credits granted on the Receivables, all merchandise returned and all other dealings therewith;

(ii) the Grantor shall promptly deliver to the Grantee upon its request a complete and correct copy of each standard form of document or other document under which a Receivable may arise.

(iii) it shall not amend, modify, terminate or waive any provision of any Receivable constituting Collateral in any manner which could reasonably be expected to have a Material Adverse Effect on the value of the Collateral, taken as a whole. Other than in the ordinary course of business as generally conducted by it on and prior to the date hereof, and except as otherwise provided in subsection (v) below, following the occurrence and during the continuation of an Event of Default, the Grantor shall not, without the prior written approval of the Grantee: (a) grant any extension or renewal of the time of payment of any Receivable, (b) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (c) release, wholly or partially, any Person liable for the payment thereof, or (d) allow any credit or discount thereon;

(iv) except as otherwise provided in this subsection, the Grantor shall continue to collect all amounts due or to become due to the Grantor under any Receivable or any Supporting Obligation and diligently exercise each material right it may have under any Receivable, any Supporting Obligation or Collateral Support, in each case, at its own expense, and in connection with such collections and exercise, the Grantor shall take such action as the Grantor or, following the occurrence and during the continuation of an Event of Default, the Grantee may deem necessary or advisable. Notwithstanding the foregoing, the Grantee shall have the right at any time, following the occurrence and during the continuation of an Event of Default, to notify, or require the Grantor to notify, any Account Debtor of the Grantee's security interest in the Receivables and any Supporting Obligation and, in addition, at any time following the occurrence and during the continuation of an Event of Default, the Grantee shall have the right to: (a) direct the Account Debtor under any Receivables to make payment of all amounts due or to become due to the Grantor thereunder directly to the Grantee, (b) notify, or require the Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtor under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Grantee, and (c) enforce collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done. If the Grantee notifies the Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by the Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by the Grantor in the exact form received, duly indorsed by the Grantor to the Grantee if required, into an account to be designated by the Grantee in writing to the Grantor, and until so turned over, all amounts and proceeds (including checks and other instruments) received by the Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Grantee hereunder; and

(v) it shall use its commercially reasonable efforts (or, following the occurrence and during the continuation of an Event of Default if directed by the Grantee, its commercially reasonable best efforts) to keep in full force and effect any Supporting Obligation or Collateral Support relating to any Receivable.

(c) Delivery and Control of Receivables. With respect to any Receivables constituting Collateral in excess of $25,000 individually or $75,000 in the aggregate that is evidenced by, or constitutes, Chattel Paper or Instruments, such Grantor shall cause each originally executed copy thereof to be delivered to the Grantee (or its agent or designee) appropriately indorsed to the Grantee or indorsed in blank (i) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof, and (ii) with respect to any such Receivables hereafter arising, within ten (10) days of the Grantor acquiring rights therein. With respect to any Receivables constituting Collateral in excess of 25,000 individually or $75,000 in the aggregate which would constitute Electronic Chattel Paper, such Grantor shall take all steps necessary to give the Grantee control over such Receivables with respect to (i) any such Receivables in existence on the date hereof, on or prior to the date hereof, and (ii) with respect to any such Receivables hereafter arising, within ten (10) days of the Grantor acquiring rights therein. Any Receivable constituting Collateral not otherwise required to be delivered or subjected to the control of the Grantee in accordance with this subsection (c) shall be promptly delivered or subjected to such control upon request of the Grantee.

SECTION 4.04 Investment Related Property Generally.

(a) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) in the event it acquires rights in any Investment Related Property constituting Collateral after the date hereof, it shall deliver to the Grantee a completed Pledge Supplement together with all Supplements to Schedules thereto, reflecting such new Investment Related Property. Notwithstanding the foregoing, it is understood and agreed that the Security Interest of the Grantee shall attach to all Investment Related Property constituting Collateral immediately upon the Grantor's acquisition of rights therein and shall not be affected by the failure of the Grantor to deliver a supplement to Schedule 4.04 as required hereby; and

(ii) except as provided in the next sentence, in the event the Grantor receives any dividends, interest or distributions on any Investment Related Property constituting Collateral, or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any Investment Related Property constituting Collateral, then (a) such dividends, interest or distributions and securities or other property shall automatically be included in the definition of Collateral without further notice or action and (b) the Grantor shall immediately take all steps, if any, necessary or advisable, or as directed by the Grantee, to ensure the validity, perfection, priority and, if applicable, control of the Grantee over such Investment Related Property, and pending any such action, the Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Grantee.

(b) Delivery and Control. Each of the Grantors agree that, with respect to any Investment Related Property constituting Collateral in which it currently has rights, it shall comply with the provisions of this Section 4.04 on or before the Closing Date and with respect to any Investment Related Property constituting Collateral hereafter acquired by the Grantor it shall comply with the provisions of this Section 4.04 within ten (10) days of acquiring rights therein, in each case in form and substance satisfactory to the Grantee. With respect to any Investment Related Property constituting Collateral that is represented by a certificate or that is an Instrument (other than any Investment Related Property credited to a Securities Account), upon the reasonable request of Grantee, it shall promptly cause such certificate or instrument to be delivered to the Grantee or, indorsed in blank by an Effective Endorsement, regardless of whether such certificate constitutes a Certificated Security. With respect to any Investment Related Property constituting Collateral that is an Uncertificated Security (other than any Uncertificated Securities credited to a Securities Account), it shall, upon the reasonable request of Grantee, promptly cause the issuer of such Uncertificated Security to either (i) register the Grantee as the registered owner thereof on the books and records of the issuer or (ii) execute an agreement in form and substance satisfactory to the Grantee, pursuant to which such issuer agrees to comply with the Grantee's instructions with respect to such Uncertificated Security without further consent by the Grantor.

(c) Voting and Distributions. So long as no Event of Default shall have oc-curred and be continuing:

(i) except as otherwise provided under the covenants and agreements relating to Investment Related Property in this Agreement or elsewhere herein, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not in violation of the terms of this Agreement or the DIP Credit Agreement; it being understood, however, that neither the voting by the Grantors of any Pledged Stock for, or such Grantor's consent to, the election of directors (or similar governing body) at a regularly scheduled annual or other meeting of stockholders or with respect to incidental matters at any such meeting, nor the Grantor's consent to or approval of any action otherwise permitted under this Agreement and the DIP Credit Agreement, shall be in deemed in violation of the terms of this Agreement or the DIP Credit Agreement within the meaning of this Section 4.04(c)(i); and

(ii) upon the occurrence and during the continuation of an Event of Default upon written notice from the Grantee to any Grantor and the issuer of the Investment Related Property:

(A) all rights of the Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall immediately cease and all such rights shall thereupon become automatically vested in the Grantee who shall thereupon have the sole right to exercise such voting and other consensual rights; and

(B) in order to permit the Grantee to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder (1) the Grantor shall promptly execute and deliver (or promptly cause to be executed and delivered) to the Grantee or, all proxies, dividend payment orders and other instruments as the Grantee may from time to time reasonably re-quest and (2) the Grantor' acknowledges that the Grantee may utilize the power of attorney set forth in Section 6.01.

SECTION 4.05 Pledged Equity Interests.

(a) Representations and Warranties. Each Grantor hereby represents and war- rants that:

(i) Schedule 4.04 sets forth under the headings “Pledged Stock,” respectively, all of the Pledged Stock owned by the Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule;

(ii) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens of other Persons and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests;

(iii) all of the Pledged Equity Interests are duly and validly authorized and issued, and in the case of Pledged Stock only, fully paid and non-assessable;

(iv) no consent of any Person, including that of any general or limited partner, member of a limited liability company, shareholder or any trust beneficiary, is necessary or desirable in connection with the creation, perfection or first priority status of the Security Interest of the Grantee in any Pledged Equity Interests constituting Collateral or the exercise by the Grantee of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof; and

(v) none of the Pledged Stock are or represent interests in issuers that: (a) are registered as investment companies, (b) are dealt in or traded on securities exchanges or markets, or (c) to the knowledge of the Grantor have opted to be treated as securities under the UCC or uniform commercial code of any jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) without the prior written consent of the Grantee, it shall not vote to enable or take any other action to: (a) amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that materially adversely changes the rights of the Grantor with respect to any Investment Related Property constituting Collateral or adversely affects the validity, perfection or priority of the Grantee's Security Interests therein, (b) permit any issuer of any Pledged Equity Interest constituting Collateral to issue any additional stock, partnership interests, limited liability company interests or other equity interests of any nature or to issue securities convertible into or granting the right of purchase or exchange for any stock or other equity interest of any nature of such issuer except for any of the above issued in favor of the Grantor, (c) other than as permitted under the DIP Credit Agreement, permit any issuer of any Pledged Equity Interest to dispose of all or a material portion of its assets, or (d) waive any default under or breach of any tentis of any organizational document relating to the issuer of any Pledged Equity Interest or the terms of any Pledged Debt; provided, however, notwithstanding the foregoing, if any issuer of any Pledged Stock takes any such action in violation of the foregoing, the Grantor shall promptly notify the Grantee in writing of any such election or action and, in such event, the Grantor shall continue to comply with Section 4.05;

(ii) it shall comply with all of its material obligations under any partnership agreement or limited liability company agreement constituting Collateral and shall enforce all of its rights with respect to any Investment Related Property constituting Collateral;

(iii) without the prior written consent of the Grantee, it shall not permit any issuer of any Pledged Equity Interest that is a Subsidiary of the Grantor to merge or consolidate unless: (i) such issuer creates a security interest that is perfected by a filed financing statement (that is not effective solely under Section 9-508 of the UCC) in collateral in which such new debtor has or acquires rights, and (ii) to the extent the same would constitute Collateral hereunder, all the outstanding capital stock or other equity interests of the surviving or resulting corporation, limited liability company, partnership or other entity is, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding equity interests of the Grantor; provided that if the surviving or resulting the Grantor upon any such merger or consolidation involving an issuer is a Controlled Foreign Corporation, then the Grantor shall only be required to pledge equity interests in accordance with Section 2.02; and

(iv) it shall notify the Grantee of any default of which it is aware under any Pledged Debt that has caused, either in any case or in the aggregate, a Material Adverse Effect.

SECTION 4.06 Pledged Debt.

(a) Representations and Warranties . Each Grantor hereby represents and war- rants that Schedule 4.04 sets forth under the heading "**Pledged Debt**" all of the Pledged Debt owned by the Grantor and, except for exceptions to the following that could not reasonably be expected to have a Material Adverse Effect on the value of the Collateral, taken as a whole, to the knowledge of the Grantor, all of such Pledged Debt: (i) has been duly authorized, authenticated or issued, and delivered, (ii) is the legal, valid and binding obligation of the issuers thereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to limiting creditors' rights generally or by equitable principles relating to enforceability, and is not in default, and (iii) constitutes all of the issued and outstanding inter-company Indebtedness of the Grantor;

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that it shall promptly notify the Grantee upon obtaining knowledge thereof, of any default under any Pledged Debt that has caused, either in any individual case or in the aggregate, a Material Adverse Effect.

SECTION 4.07 Investment Accounts.

(a) Representations and Warranties. Each Grantor hereby represents and war-rants that:

(i) Schedule 4.04 sets forth under the headings "**Securities Accounts**" and "**Commodities Accounts**," respectively, all of the Securities Accounts and Commodities Accounts in which the Grantor has rights. The Grantor is the sole entitlement holder of each such Securities Account and Commodity Account, and the Grantor has not consented to, and is not otherwise aware of, any Person (other than the Grantee pursuant thereto) having "control" (within the meanings of Sections 8-106 and 9106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or securities or other property credited thereto;

(ii) Schedule 4.04 sets forth under the headings "**Deposit Accounts**" all of the Deposit Accounts in which the Grantor has rights. The Grantor is the sole account holder of each such Deposit Account and the Grantor has not consented to, and is not otherwise aware of, any Person (other than the Grantee pursuant thereto) having either sole dominion and control (within the meaning of common law) or "control" (within the meaning of Section 9-104 of the UCC) over any such Deposit Account or any money or other property deposited therein; and

(iii) the Grantor has taken, or will take on the date hereof, all actions necessary or desirable, including those specified in Section 4.07(c), to: (a) establish the Grantee's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Related Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Security Entitlements or Commodities Accounts, in each case to the extent constituting Collateral; (b) establish the Grantee's "control" (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts, in each case to the extent constituting Collateral; and (c) if requested by the Grantee, deliver all Instruments to the Grantee, in each case to the extent constituting Collateral;

(b) Covenant and Agreement. Each Grantor hereby covenants and agrees with the Grantee that it shall not close or terminate any Investment Account (other than an Excluded Account) without the prior written consent of the Grantee and unless a successor or replacement account has been established with the prior written consent of the Grantee with respect to which successor or replacement or amended account control agreement has been entered into by the appropriate the Grantor, the Grantee and securities intermediary or depository institution at which such successor or replacement account is to be maintained in accordance with the provisions of Section 4.07(c).

(c) Delivery and Control. With respect to any Investment Related Property constituting Collateral consisting of Securities Accounts or Security Entitlements, it shall, to the extent not already in place prior to the Petition Date, cause the securities intermediary maintaining such Securities Account or Security Entitlements to enter into an agreement in form and substance satisfactory to the Grantee, pursuant to which it shall agree to comply with the Grantee's Entitlement Orders without further consent by the Grantor. With respect to any Investment Related Property constituting Collateral that is a "Deposit Account," it shall cause the depositary institution maintaining such account to enter into an agreement in form and substance satisfactory to the Grantee, pursuant to which the Grantee shall have "control" (within the meaning of Section 9-104 of the UCC) over such Deposit Account. The Grantor shall have entered into such control agreement or agreements with respect to (i) any Securities Accounts, Security Entitlements or Deposit Accounts that exist on the Closing Date (other than Excluded Accounts), as of or prior to the Closing Date and (ii) any Securities Accounts, Security Entitlements or Deposit Accounts (other than Excluded Accounts) that are created or acquired after the Closing Date, as of or prior to the deposit or transfer of any such Security Entitlements or funds, whether constituting moneys or investments, into such Securities Accounts or Deposit Accounts.

Upon the occurrence and during the continuation of an Event of Default, the Grantee shall have the right, without notice to the Grantor, to transfer all or any portion of the Investment Related Property to its name or the name of its nominee or agent. In addition, upon the occurrence and during the continuation of an Event of Default, the Grantee shall have the right at any time, without notice to the Grantor, to exchange any certificates or instruments representing any Investment Related Property constituting Collateral for certificates or instruments of smaller or larger denominations.

SECTION 4.08 Letter of Credit Rights.

(a) Representations and Warranties. Each Grantor hereby represents and war-rants that:

(i) all letters of credit to which the Grantor has rights are listed on Schedule 4.08; and

(ii) it has obtained the consent of each issuer of any letter of credit to the assignment of the proceeds of the letter of credit to the Grantee.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any letter of credit hereafter arising it shall obtain the prior consent of the issuer thereof to the assignment of the proceeds of the letter of credit to the Grantee and, shall deliver to the Grantee a completed Pledge Supplement together with all Supplements to Schedules thereto.

SECTION 4.09 Intellectual Property.

(a) Representations and Warranties. Except as disclosed in Schedule 4.09, each Grantor hereby represents and warrants that:

(i) Schedule 4.09 sets forth a true and complete list of (i) all United States, state and foreign registrations of and applications for Patents, Trademarks, and Copyrights owned by the Grantor and (ii) all Patent Licenses, Trademark Licenses, Copyright Licenses and Trade Secret Licenses material to the business of the Grantor;

(ii) it is the sole and exclusive owner of the entire right, title, and interest in and to all Intellectual Property listed on Schedule 4.09, and owns or has the valid right to use all other Intellectual Property used in or necessary to conduct its business, free and clear of all Liens and licenses, except for the licenses set forth on Schedule 4.09;

(iii) all Intellectual Property which is material to the business of the Grantor is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and the Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every registration and application of Copyrights, Patents and Trademarks material to the business of the Grantor in full force and effect;

(iv) all Intellectual Property which is material to the business of the Grantor is valid and enforceable; no holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity of, the right of the Grantor to register, or the right of the Grantor, taken as a whole, to own or use, any such Intellectual Property and no such action or proceeding is pending or, to the best of the knowledge of the Grantor threatened;

(v) all registrations and applications for Copyrights, Patents and Trademarks which are material to the business of the Grantor are standing in the name of the Grantor and none of the Trademarks, Patents, Copyrights or Trade Secrets has been licensed by the Grantor to any affiliate or third party, except as disclosed in Schedule 4.09;

(vi) the Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks material to the business of the Grantor;

(vii) the Grantor uses adequate standards of quality in the manufacture, distribution, and sale of all products sold and in the provision of all services rendered under or in connection with all Trademark Collateral material to the business of the Grantor and has taken all commercially reasonable action necessary to insure that all licensees of such Trademark Collateral owned by the Grantor use such adequate standards of quality;

(viii) except for exceptions to the following that could not reasonably be expected to have a Material Adverse Effect, (i) to the extent applicable, the conduct of the Grantor's business does not infringe upon or otherwise violate any trademark, patent, copyright, trade secret or other intellectual property right owned or controlled by a third party and (ii) no written claim has been made that the use of any Intellectual Property owned or used by the Grantor (or any of the Grantor's respective licensees) violates the asserted rights of any third party;

(ix) no third party is infringing upon or otherwise violating any rights in any Intellectual Property owned or used by the Grantor or any of its respective licensees;

(x) no settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by the Grantor or to which the Grantor are bound that adversely affect the rights of the Grantor, to own or use any Intellectual Property material to the business of the Grantor; and

(xi) the Grantor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale or transfer of any Intellectual Property material to the business of the Grantor that has not been terminated or released. There is no effective financing statement or other document or instrument now executed, or on file or recorded in any public office, granting a security interest in or otherwise encumbering any part of the Intellectual Property.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(i) it shall not do any act or omit to do any act whereby any of the Intellectual Property which is material to the business of the Grantor may lapse, or become abandoned, dedicated to the public, or unenforceable, or which would adversely affect the validity, grant, or enforceability of the security interest granted therein;

(ii) it shall not, with respect to any Trademarks which are material to the business of the Grantor cease the use of any of such Trademarks or fail to maintain the level of the quality of products sold and services rendered under any of such Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and the Grantor shall take all commercially reasonable steps to insure that licensees of such Trademarks use such consistent standards of quality;

(iii) it shall promptly notify the Grantee if it knows or has reason to know that any item of the Intellectual Property that is material to the business of the Grantor may become (a) abandoned or dedicated to the public or placed in the public domain, (b) invalid or unenforceable or (c) subject to any adverse determination or development (including the institution of proceedings) in any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court;

(iv) it shall take all commercially reasonable steps necessary to preserve the rights and interests of the Grantor in the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue any application and maintain any registration of each Trademark, Patent, and Copyright owned by the Grantor and material to the business of the Grantor which is now or shall become included in the Intellectual Property constituting Collateral including, but not limited to, those items on Schedule 4.09;

(v) in the event that any Intellectual Property owned by or exclusively licensed to the Grantor, and in either event that is material to the business of the Grantor is infringed, misappropriated, or diluted by a third party, the Grantor shall promptly take all commercially reasonable actions to stop such infringement, misappropriation, or dilution and protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages;

(vi) it shall promptly (but in no event more than thirty (30) days after the Grantor obtains knowledge thereof) report to the Grantee (a) the filing of any application to register any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any state registry or foreign counterpart of the foregoing (whether such application is filed by the Grantor or through any agent, employee, licensee, or designee thereof) and (b) the registration of any Intellectual Property by any such office, in each case by executing and delivering to the Grantee a completed Pledge Supplement together with all Supplements to Schedules thereto;

(vii) it shall, execute and deliver to the Grantee any document required to acknowledge, confirm, register, record, or perfect the Grantee's interest in any part of the Intellectual Property constituting Collateral, whether now owned hereafter acquired (including, but not limited to, each IP Security Agreement), in form and substance satisfactory to the Grantee;

(viii) except with the prior written consent of the Grantee or as permitted under the DIP Credit Agreement, the Grantor shall not execute any financing statement or other document or instruments against any Intellectual Property of the Grantor constituting Collateral except financing statements or other documents or instruments filed or to be filed in favor of the Grantee and the Grantor shall not sell, assign, transfer, license, grant any option, or create or suffer to exist any Lien upon or with respect to the Intellectual Property;

(ix) use commercially reasonable efforts not to permit the inclusion in any contract to which it becomes a party of any provision that would in any way materially impair or prevent the creation of a security interest in, or the assignment of, the rights and interests of the Grantor in any property included within the definitions of any Intellectual Property acquired under such contracts;

(x) it shall take all commercially reasonable steps to protect the secrecy of all Trade Secrets, including, without limitation, entering into confidentiality agreements with employees and labeling and restricting access to secret information and documents; and

(xi) it shall continue to collect, at its own expense, all amounts due or to become due to the Grantor in respect of the Intellectual Property constituting Collateral or any portion thereof. In connection with such collections, the Grantor may take (and, at Grantee's reasonable direction, shall take) such action as the Grantor (or the Grantee) may deem reasonably necessary or advisable to enforce collection of such amounts. Notwithstanding the foregoing, following the occurrence and during the continuation of an Event of Default, the Grantee shall have the right at any time, to notify, or require the Grantor to notify, any obligors with respect to any such amounts of the existence of the security interest created hereby.

SECTION 4.10 Commercial Tort Claims.

(a) Representations and Warranties. Each Grantor hereby represents and warrants that Schedule 4.10 sets forth as of the date hereof all Commercial Tort Claims of the Grantor in excess of $20,000; and

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any Commercial Tort Claim of the Grantor in excess of $20,000 hereafter arising it shall deliver to the Grantee a completed Pledge Supplement together with all Supplements to Schedules thereto, identifying such new Commercial Tort Claims.

ARTICLE V

FURTHER ASSURANCES; WAIVERS AND EXTENSIONS; COSTS AND EXPENSES

SECTION 5.01 Further Assurances.

(a) Each Grantor agrees that from time to time, at the expense of the Grantor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Grantee may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted hereby or to enable the Grantee to exercise and enforce its rights and remedies hereunder with respect to any Collateral (regardless of whether such action could have been taken at an earlier time). Without limiting the generality of the foregoing, the Grantor shall promptly:

(i) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or desirable, or as the Grantee may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby;

(ii) to the extent provided in this Agreement, take all actions necessary to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in the Intellectual Property with any intellectual property registry in which said Intellectual Property is registered or in which an application for registration is pending including, without limitation, the United States Patent and Trademark Office, the United States Copyright Office, the various Secretaries of State, and the foreign counterparts on any of the foregoing;

(iii) following the occurrence and during the continuation of an Event of Default, at any reasonable time, upon request by the Grantee, assemble the Collateral and allow inspection of the Collateral by the Grantee, or persons designated by the Grantee, and provide whatever instructions are deemed necessary or desirable in the discretion of the Grantee to any third-parties which may hold or control any of the Collateral; and

(iv) at the Grantee's request appear in and defend any action or proceeding that may affect the Grantor's title to or the Grantee's security interest in all or any part of the Collateral;

(b) each Grantor hereby authorizes the Grantee to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Grantee may determine, in its sole discretion, are necessary or advisable to perfect the Security Interest granted herein to the Grantee. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Grantee may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the Security Interest in the Collateral granted to the Grantee, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." The Grantors shall furnish to the Grantee from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Grantee may reasonably request, all in reasonable detail; and

(c) each Grantor hereby authorizes the Grantee to modify Schedule 4.09 after obtaining the Grantor's approval of or signature to such modification to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by the Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which the Grantor no longer has any rights.

SECTION 5.02 Waivers and Extensions.

The Grantee may, in the exercise of its sole discretion, extend the time for, or waive, the performance or satisfaction of any condition, obligation or other act required herein of any Grantor. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Grantee and delivered to the applicable Grantor.

SECTION 5.03 Costs and Expenses.

Notwithstanding anything to the contrary herein, any action taken or required to be taken hereunder by the Grantors or the Grantee shall be at the sole cost and expense of the Grantors, jointly and severally.

ARTICLE VI

GRANTEE APPOINTED ATTORNEY-IN-FACT

SECTION 6.01 Power of Attorney.

To the maximum extent permitted by applicable law, each Grantor hereby irrevocably appoints the Grantee (such appointment being coupled with an interest) as the Grantor's attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor, the Grantee or otherwise, from time to time in the Grantee's discretion to take any action set forth below and to execute any instrument that the Grantee may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default, to obtain and adjust Insurance required to be maintained by the Grantor or paid to the Lender pursuant to the DIP Credit Agreement;

(b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and Chattel Paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Grantee may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Grantee with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements in respect of the Grantor's Collateral against the Grantor as debtor;

(f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the Lien and security interest granted herein in the Intellectual Property in the name of the Grantor as debtor;

(g) upon the occurrence and during the continuation of an Event of Default, to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement or any other DIP Loan Document, including, without limitation, access to pay or discharge taxes or Liens levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Grantee in its sole discretion, with any such payments made by the Grantee to be Obligations of the Grantor to the Lender, due and payable in accordance with the time limits set forth in the DIP Loan Documents (or, if no such time-limits are set forth with respect to the applicable action, upon demand); and

(h) upon the occurrence and during the continuation of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Grantee were the absolute owner thereof for all purposes, and to do, at the Grantee's option, at any time or from time to time, all acts and things that the Grantee deems reasonably necessary to protect, preserve or realize upon the Collateral and the Grantee's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as the Grantor might do.

SECTION 6.02 No Duty on the Part of Grantee.

The powers conferred on the Grantee hereunder are solely to protect the interests of the Grantee in the Collateral and shall not impose any duty upon the Grantee to exercise any such powers. The Grantee shall be accountable only for amounts it actually receives as a result of the exercise of such powers, and none of its officers, directors, employees or agents, including attorneys, shall be responsible to the Grantor or any other Person for any act or failure to act hereunder or in connection with any of the other DIP Loan Documents, except for their own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and nonappealable judgment. This provision shall be applicable to Grantee whether acting in its capacity as Grantee or Lender under the DIP Loan Agreement or any other DIP Loan Documents.

ARTICLE VII

REMEDIES

THE REMEDIES LISTED BELOW IN THIS ARTICLE VII ARE SUBJECT TO ANY LIMITATIONS IMPOSED BY ORDERS APPROVING THE DIP LOAN DOCUMENTS.

SECTION 7.01 Generally.

(a) If any Event of Default shall have occurred and be continuing, the Grantee may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require the Grantors to, and each Grantor hereby agrees that it shall at its expense promptly upon request of the Grantee, forthwith assemble all or part of the Collateral as directed by the Grantee and make it available to the Grantee at places to be designated by the Grantee;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Grantee deems necessary or appropriate; and

(iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Grantee's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Grantee may deem commercially reasonable under the circumstances;

(b) The Grantee may be the purchaser of any or all of the Collateral at any public or private sale in accordance with the UCC and the Grantee, 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 sale made in accordance with the UCC, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Grantee at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of the Grantor, and the Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to the Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable and lawful notification. The Grantee shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Grantee 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 Grantor hereby waives, to the maximum extent permitted by law, any claims against the Grantee arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Grantee accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Obligations, the Grantor shall be liable for the deficiency and the fees of any attorneys employed by the Grantee to collect such deficiency. The Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Grantee, that the Grantee has no adequate remedy at law in respect of such breach and, as a consequence, that to the maximum extent permitted by law, each and every covenant contained in this Section shall be specifically enforceable against the Grantor, and the Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing or that there has been Payment in Full or performance in full of the Obligations. This provision shall be applicable to Grantee whether acting in its capacity as Grantee or Lender under the DIP Loan Agreement or any other DIP Loan Documents. Nothing in this Section shall in any way alter the rights of the Grantee or Lender hereunder; and

(c) To the maximum extent permitted by applicable law, the Grantee may sell the Collateral "as is" and "where is" and without giving any warranties as to the Collateral. The Grantee may specifically disclaim or modify any warranties of title or the like. To the maximum extent permitted by law, this procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

SECTION 7.02 Application of Proceeds; Payment Over.

Except as expressly provided elsewhere in this Agreement, all proceeds received in respect of any sale, any collection from, or other realization upon all or any part of the Collateral shall be applied in accordance with the provisions of the DIP Credit Agreement.

SECTION 7.03 Sales on Credit.

If the Grantee sells any of the Collateral on credit, the Grantors, as applicable, will be credited only with payments actually made by purchaser and received by the Grantee and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral in accordance with the terms of such credit sale, the Grantee may resell or otherwise dispose of the Collateral in accordance with the applicable provisions hereof and the Grantors, as applicable, shall be credited with proceeds of the sale in accordance with the applicable provisions hereof.

SECTION 7.04 Deposit Accounts.

Without limiting any other provisions hereof or of the DIP Credit Agreement, if any Event of Default shall have occurred and be continuing, the Grantee may give notice of exclusive control or similar notice to the account-holding bank or financial institution as contemplated in the applicable control agreement or otherwise, apply the balance from any Deposit Account in respect of which the Grantee has “control” (within the meaning of Article 9 of the UCC), and/or instruct the bank at which any Deposit Account in respect of which the Grantee has “control” (within the meaning of Article 9 of the UCC) is maintained to pay the balance of any Deposit Account to or for the benefit of the Grantee.

SECTION 7.05 Securities Accounts; Commodities Accounts.

Without limiting any other provisions hereof or of the DIP Credit Agreement, if any Event of Default shall have occurred and be continuing, the Grantee may give notice of exclusive control or similar notice to the account-holding bank or financial institution as contemplated in the applicable control agreement or otherwise, and take all other action set forth in Section 4.07 hereof, the DIP Loan Documents and under the UCC.

SECTION 7.06 Investment Related Property.

Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Grantee may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such re-strictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Grantee shall not have any obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree or desires to so register it. If the Grantee determines to exercise its right hereunder to sell any or all of the Investment Related Property, upon written request, the Grantor shall promptly, and to the extent Controlled by the Grantor, shall promptly cause each issuer of any Pledged Equity Interests to be sold hereunder from time to time to furnish to the Grantee all such information as the Grantee may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Grantee in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

SECTION 7.07 Intellectual Property.

(a) Anything contained herein to the contrary notwithstanding, upon the oc-currence and during the continuation of an Event of Default:

(i) the Grantee shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Grantee or otherwise, in the Grantee’s sole discretion, to enforce any of any Grantor’s rights in any Intellectual Property constituting Collateral to the extent necessary to satisfy the Obligations, in which event such Grantor shall, at the request of the Grantee, do any and all lawful acts and execute any and all documents required by the Grantee in aid of such enforcement and the Grantor shall promptly, upon demand, reimburse and indemnify the Grantee as provided in the DIP Credit Agreement in connection with the exercise of its rights under this Section, and, to the extent that the Grantee shall elect not to bring suit to enforce any Intellectual Property as provided in this Section, the Grantor agrees to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement or other violation of any of the Grantor’s rights in the Intellectual Property by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so infringing as shall be necessary to prevent such infringement or violation;

(ii) upon written demand from the Grantee, the Grantor shall promptly grant, assign, convey or otherwise transfer to the Grantee an absolute assignment of all of the Grantor’s right, title and interest in and to the Intellectual Property constituting Collateral and shall execute and deliver to the Grantee such documents as are necessary or appropriate to carry out the intent and purposes of this Agreement, except as would result in the abandonment, invalidation, or unenforceability of such right, title, or interest;

(iii) the Grantor agrees that such a grant, conveyance, transfer, assignment and/or recording shall be applied to reduce the Obligations outstanding in accordance with Section 7.02 only to the extent that the Grantee receives Cash Proceeds (or, when no Cash Proceeds are received, at such time as the property that is received is subsequently reduced to cash) in respect of the sale of, or other realization upon, the Intellectual Property;

(iv) upon written demand from the Grantee, the Grantor shall promptly make available to the Grantee, to the extent within the Grantor's power and authority, such personnel in the Grantor's employ on the date of such Event of Default (to the extent then in the Grantor's employ) as the Grantee may reasonably designate, by name, title or job responsibility, to permit the Grantee to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by the Grantor under or in connection with the Trademarks, Trademark Licenses, such persons to be available to perform their functions on the Grantee's behalf and to be compensated by the Grantee at the Grantor's expense on a per diem, pro-rata basis consistent with the salary and benefit structure applicable to each as of the date of such Event of Default;

(v) the Grantee shall have the right to notify, or require the Grantor to notify, any obligors with respect to amounts due or to become due to the Grantor in respect of the Intellectual Property constituting Collateral, of the existence of the Security Interest created herein, to direct such obligors to make payment of all such amounts directly to the Grantee, and, upon such notification to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done;

(vi) all amounts and proceeds (including checks and other instruments) received by the Grantor in respect of amounts due to the Grantor in respect of the Collateral or any portion thereof shall be received in trust for the benefit of the Grantee hereunder and shall be forthwith paid over or delivered to the Grantee in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 7.08; and

(vii) the Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon;

(b) If an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing and no other Event of Default shall have occurred and be continuing, (i) an assignment or other transfer to the Grantee of any rights, title and interests in and to the Intellectual Property shall have been previously made and shall have become absolute and effective and (ii) the Obligations shall not have become immediately due and payable, upon the written request of the Grantor, the Grantee shall promptly execute and deliver to the Grantor such assignments or other transfer as may be necessary to reassign to the Grantor any such rights, title and interests as may have been assigned to the Grantee as aforesaid, subject to any disposition thereof that may have been made by the Grantee; provided, after giving effect to such reassignment, the Grantee's Security Interest granted pursuant hereto, as well as all other rights and remedies of the Grantee granted hereunder, shall continue to be in full force and effect; and provided further, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Grantee; and

(c) Solely for the purpose of enabling the Grantee to exercise rights and rem-edies under this Article VII and at such time as the Grantee shall be lawfully entitled to exercise such rights and remedies, the Grantor hereby grants to the Grantee, to the extent it has the right to do so, effective upon the occurrence and during the continuation of an Event of Default, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of the Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by the Grantor, and wherever the same may be located.

SECTION 7.08 Cash Proceeds.

In addition to the rights of the Grantee specified in Section 4.03 with respect to payments of Receivables, any cash, checks and other near-cash items in each case to the extent constituting Collateral (collectively, "Cash Proceeds") received by the Grantee (whether from the Grantor or otherwise) shall be held and distributed in accordance with the applicable provisions hereof and the DIP Credit Agreement.

ARTICLE VIII

CONTINUING SECURITY INTEREST; TRANSFER OF LOANS

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the Payment in Full or performance in full of all Obligations be binding upon the Grantors, their successors and assigns, and inure, together with the rights and remedies of the Grantee hereunder. Without limiting the generality of the foregoing, but subject to the terms of the DIP Credit Agreement, the Lenders may assign or otherwise transfer any Loans held by it to any other Person. Upon the Payment in Full or performance in full of all Obligations, the Security Interest granted hereby shall terminate hereunder and all rights to the Collateral shall revert to the Grantors. Upon any such termination the Grantee shall, at the Grantors' expense, execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such termination.

ARTICLE IX

STANDARD OF CARE; GRANTEE MAY PERFORM

The powers conferred on the Grantee hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Grantee shall have no duty to the Grantors or any other Person, including any parties in interest in the Grantors' bankruptcy case(s), as to any Collateral, or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Grantee shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially similar to that which the Grantee accords its own property. Neither the Grantee nor any of its directors, officers, employees or agents, including attorneys, shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the Grantee may itself perform, or cause performance of, such agreement, and the expenses of the Grantee incurred in connection therewith shall be payable by the Grantors pursuant to Section 10.3 of the DIP Credit Agreement.

ARTICLE X

MISCELLANEOUS

Any notice required or permitted to be given under this Agreement shall be given in accordance with the DIP Credit Agreement. No failure or delay on the part of the Grantee in the exercise of any power, right or privilege hereunder or under any other DIP Loan 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. All rights and remedies existing under this Agreement and the other DIP Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement 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. All covenants hereunder shall be given independent effect so that if a particular action or condition is expressly prohibited 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 an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon and inure to the benefit of the Grantee and the Grantors and their respective successors and assigns. The Grantors shall not, without the prior written consent of the Grantee, assign any right, duty or obligation hereunder. 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. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement. This Agreement and the other DIP Loan Documents constitute the entire agreement between 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. This Agreement shall become effective when it shall have been executed and delivered by each Grantor and by the Grantee, and thereafter, subject to entry of the Interim Order, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

The provisions of this Agreement shall not be waived, amended, supplemented or modified except pursuant to an agreement or agreements in writing entered into by the Grantors and the Grantee, and then any such waiver, amendment, supplement or modification shall be effective only in the specific instance and for the specific purpose for which given.

THE VALIDITY OF THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER DIP LOAN DOCUMENT IN RESPECT OF SUCH OTHER DIP LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE OF NEW YORK AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT GRANTEE'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE GRANTEE ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH GRANTOR AND EACH LENDER WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION OF ARTICLE X OF THE AGREEMENT.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH GRANTOR AND GRANTEE HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND ANY OF THE DIP LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH CREDIT PARTY AND EACH LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

SUBJECT TO THE LAST SENTENCE OF THIS SECTION (D) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OTHER DIP LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT GRANTEE MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, (I) THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION OR DISPUTE INVOLVING, RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER DIP LOAN DOCUMENTS AND (II) THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION OR DISPUTE INVOLVING, RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER DIP LOAN DOCUMENTS; PROVIDED, THAT NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF THE GRANTEE OR ANY LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW OR COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY CREDIT PARTY OR ANY COLLATERAL IN ANY OTHER JURISDICTION.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the Grantors and the Grantee have caused this Security Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

GRANTORS:

SG BLOCKS, INC.
in its capacity as a Grantor

By: /s/ Paul M. Galvin
Name: Paul M. Galvin
Title: CEO

SG BUILDING BLOCKS, INC.
in its capacity as a Grantor

By: Paul M. Galvin
Name: Paul M. Galvin
Title: CEO

ENDAXI INFRASTRUCTURE GROUP, INC.
in its capacity as a Grantor

By: Paul M. Galvin
Name: Paul M. Galvin
Title: CEO

GRANTEE

HILLAIR CAPITAL MANAGEMENT LLC,
in its capacity as Grantee

By: ____________________
Name:
Title:

IN WITNESS WHEREOF, the Grantors and the Grantee have caused this Security Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

GRANTORS:

SG BLOCKS, INC.
in its capacity as a Grantor

By: ______________________________
Name:
Title:

SG BUILDING BLOCKS, INC.
in its capacity as a Grantor

By: ______________________________
Name:
Title:

ENDAXI INFRASTRUCTURE GROUP, INC.
in its capacity as a Grantor

By: ______________________________
Name:
Title:

GRANTEE

HILLAIR CAPITAL MANAGEMENT LLC,
in its capacity as Grantee

By: Sean M. McAvoy
Name: Sean M. McAvoy
Title: Managing Member

SCHEDULES

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND APPLICABLE STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

Original Issue Date: June __, 2016
Original Conversion Price (subject to adjustment herein): **$1.25**

ORIGINAL ISSUE DISCOUNT
SENIOR SECURED CONVERTIBLE DEBENTURE
DUE JUNE __, 2018

THIS ORIGINAL ISSUE DISCOUNT SENIOR SECURED CONVERTIBLE DEBENTURE is duly authorized and validly issued Original Issue Discount Senior Secured Convertible Debenture of SG Blocks, Inc., a Delaware corporation, (the "Company"), having its principal place of business at 912 Bluff Road, Brentwood, TN 37027, designated as its Original Issue Discount Senior Secured Convertible Debenture due on the Maturity Date (this debenture, the "Debenture").

FOR VALUE RECEIVED, the Company promises to pay to Hillair Capital Investments L.P. or its registered assigns (the "Holder"), or shall have paid pursuant to the terms hereunder, the principal sum of $[$1,750,000] on the Maturity Date or such earlier date as this Debenture is required or permitted to be repaid as provided hereunder. This Debenture is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Debenture, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement and (b) the following terms shall have the following meanings:

"Alternate Consideration" shall have the meaning set forth in Section 5(e).

"Bankruptcy Event" means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Company or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts or (g) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

"Base Conversion Price" shall have the meaning set forth in Section 5(b).

"Beneficial Ownership Limitation" shall have the meaning set forth in Section 4(d).

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Buy-In" shall have the meaning set forth in Section 4(c)(v).

"Change of Control Transaction" means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Company, by contract or otherwise) of in excess of 33% of the voting securities of the Company (other than by means of conversion or exercise of the Debentures and the Securities issued together with the Debentures), (b) the Company merges into or consolidates with any other Person, or any Person merges into or consolidates with the Company and, after giving effect to such transaction, the stockholders of the Company immediately prior to such transaction own less than 66% of the aggregate voting power of the Company or the successor entity of such transaction, (c) the Company sells or transfers all or substantially all of its assets to another Person and the stockholders of the Company immediately prior to such transaction own less than 66% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a three year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the date hereof), or (e) the execution by the Company of an agreement to which the Company is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

"Conversion" shall have the meaning ascribed to such term in Section 4.

"Conversion Date" shall have the meaning set forth in Section 4(a).

"Conversion Price" shall have the meaning set forth in Section 4(b).

"Conversion Schedule" means the Conversion Schedule in the form of Schedule 1 attached hereto.

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of this Debenture in accordance with the terms hereof.

"Debenture Register" shall have the meaning set forth in Section 2(c).

"Dilutive Issuance" shall have the meaning set forth in Section 5(b).

"Dilutive Issuance Notice" shall have the meaning set forth in Section 5(b).

"Event of Default" shall have the meaning set forth in Section 8(a).

"Fundamental Transaction" shall have the meaning set forth in Section 5(e).

"Purchase Agreement" means the Securities Purchase Agreement, dated as of June , 2016 among the Company and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms.

"Maturity Date" means June____, 2018.

"Mandatory Default Amount" means the sum of (a) the greater of (i) the outstanding principal amount of this Debenture, divided by the Conversion Price on the date the Mandatory Default Amount is either (A) demanded (if demand or notice is required to create an Event of Default) or otherwise due or (B) paid in full, whichever has a lower Conversion Price, multiplied by the VWAP on the date the Mandatory Default Amount is either (x) demanded or otherwise due or (y) paid in full, whichever has a higher VWAP, or (ii) 130% of the outstanding principal amount of this Debenture, plus all other amounts, costs, expenses and liquidated damages due in respect of this Debenture.

"New York Courts" shall have the meaning set forth in Section 9(d).

"Notice of Conversion" shall have the meaning set forth in Section 4(a).

"Original Issue Date" means the date of the first issuance of the Debentures, regardless of any transfers of any Debenture and regardless of the number of instruments which may be issued to evidence such Debentures.

"Permitted Indebtedness" means (a) the indebtedness evidenced by the Debentures and (b) lease obligations, purchase money indebtedness incurred in connection with the acquisition of capital assets and lease obligations with respect to newly acquired or leased assets.

"Permitted Lien" means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Company's business, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the Company's business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clause (a) and (d) Liens incurred in connection with Permitted Indebtedness under clause (b) thereunder, provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets so acquired or leased.

"Purchase Agreement" means the Securities Purchase Agreement dated as of even date herewith between the Company and the Holder as amended, modified or supplemented from time to time in accordance with its terms.

"Registration Statement" means a registration statement covering the resale of the Underlying Shares by the Holder.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Share Delivery Date" shall have the meaning set forth in Section 4(c)(ii).

"Successor Entity" shall have the meaning set forth in Section 5(e).

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTC Markets Inc. or the OTC Bulletin Board (or any successors to any of the foregoing).

"VIA/AP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date on which the Common Stock actually traded) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTC Bulletin Board is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the "Pink Sheets" published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Section 2. Interest.

a) No Interest. This is an original issue discount obligation and accordingly there is no regularly scheduled interest payments.

b) Prepayment. Except as otherwise set forth in this Debenture, the Company may not prepay any portion of the principal amount of this Debenture without the prior written consent of the Holder.[1]

Section 3. Registration of Transfers and Exchanges.

a) Different Denominations. This Debenture is exchangeable for an equal aggregate principal amount of Debentures of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

b) Reliance on Debenture Register. Prior to due presentment for transfer to the Company of this Debenture, the Company and any agent of the Company may treat the Person in whose name this Debenture is duly registered on the Debenture Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Debenture is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

[1] Note to draft: discuss

Section 4. Conversion.

a) Voluntary Conversion. At any time after the Original Issue Date until this Debenture is no longer outstanding, this Debenture shall be convertible, in whole or in part, into shares of Common Stock at the option of the Holder, at any time and from time to time (subject to the conversion limitations set forth in Section 4(d) hereof). The Holder shall effect conversions by delivering to the Company a Notice of Conversion, the form of which is attached hereto as Annex A (each, a "Notice of Conversion"), specifying therein the principal amount of this Debenture to be converted and the date on which such conversion shall be effected (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions hereunder, the Holder shall not be required to physically surrender this Debenture to the Company unless the entire principal amount of this Debenture has been so converted in which case the Holder shall surrender this Debenture as promptly as is reasonably practicable after such conversion without delaying the Company's obligation to deliver the shares on the Share Delivery Date. Conversions hereunder shall have the effect of lowering the outstanding principal amount of this Debenture in an amount equal to the applicable conversion. The Holder and the Company shall maintain records showing the principal amount(s) converted and the date of such conversion(s). The Company may deliver an objection to any Notice of Conversion within one (1) Business Day of delivery of such Notice of Conversion. In the event of any dispute or discrepancy, the records of the Holder shall be controlling and determinative in the absence of manifest error. **The Holder, and any assignee by acceptance of this Debenture, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of this Debenture, the unpaid and unconverted principal amount of this Debenture may be less than the amount stated on the face hereof.**

b) Conversion Price. The conversion price in effect on any Conversion Date shall be equal to **$1.25**, subject to adjustment herein (the "Conversion Price").

c) Mechanics of Conversion.

i . Conversion Shares Issuable Upon Conversion of Principal Amount. The number of Conversion Shares issuable upon a conversion hereunder shall be determined by the quotient obtained by dividing (x) the outstanding principal amount of this Debenture to be converted by (y) the Conversion Price.

i i . Delivery of Certificate Upon Conversion. Not later than three (3) Trading Days after each Conversion Date (the "Share Delivery Date"), the Company shall deliver, or cause to be delivered, to the Holder (A) a certificate or certificates representing the Conversion Shares which, on or after the earlier of (i) the six month anniversary of the Original Issue Date or (ii) the Effective Date, shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Purchase Agreement) representing the number of Conversion Shares being acquired upon the conversion of this Debenture. On or after the earlier of (i) the six month anniversary of the Original Issue Date or (ii) the Effective Date, the Company shall deliver any Conversion Shares required to be delivered by the Company under this Section 4(c) electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

iii. Failure to Deliver Certificates. If, in the case of any Notice of Conversion, such certificate or certificates are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Company at any time on or before its receipt of such certificate or certificates, to rescind such Conversion, in which event the Company shall promptly return to the Holder any original Debenture delivered to the Company and the Holder shall promptly return to the Company the Common Stock certificates issued to such Holder pursuant to the rescinded Conversion Notice.

iv . Obligation Absolute; Partial Liquidated Damages. The Company's obligations to issue and deliver the Conversion Shares upon conversion of this Debenture in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action the Company may have against the Holder. In the event the Holder of this Debenture shall elect to convert any or all of the outstanding principal amount hereof, the Company may not refuse conversion based on any claim that the Holder or anyone associated or affiliated with the Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and or enjoining conversion of all or part of this Debenture shall have been sought and obtained, and the Company posts a surety bond for the benefit of the Holder in the amount of 150% of the outstanding principal amount of this Debenture, which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to the Holder to the extent it obtains judgment. In the absence of such injunction, the Company shall issue Conversion Shares or, if applicable, cash, upon a properly noticed conversion. If the Company fails for any reason to deliver to the Holder such certificate or certificates pursuant to Section 4(c)(ii) by the Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of principal amount being converted, $10 per Trading Day (increasing to $15 per Trading Day on the fifth (5th) Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Share Delivery Date until such certificates are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare an Event of Default pursuant to Section 8 hereof for the Company's failure to deliver Conversion Shares within the period specified herein and the Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

v. Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. In addition to any other rights available to the Holder, if the Company fails for any reason to deliver to the Holder such certificate or certificates by the Share Delivery Date pursuant to Section 4(c)(ii), and if after such Share Delivery Date the Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Conversion Shares which the Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"),then the Company shall (A) pay in cash to the Holder (in addition to any other remedies available to or elected by the Holder) the amount, if any, by which (x) the Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that the Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the Holder, either reissue (if surrendered) this Debenture in a principal amount equal to the principal amount of the attempted conversion (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 4(c)(ii). For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of this Debenture with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon conversion of this Debenture as required pursuant to the terms hereof.

vi. Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of this Debenture, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Debentures), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 5) upon the conversion of the then outstanding principal amount of this Debenture. The Company covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable and, if the Registration Statement is then effective under the Securities Act, shall be registered for public resale in accordance with such Registration Statement.

vii. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of this Debenture. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Company shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

viii. Transfer Taxes and Expenses. The issuance of certificates for shares of the Common Stock on conversion of this Debenture shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that, the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of this Debenture so converted and the Company shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

Section 5. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Company, at any time while this Debenture is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon conversion of the Debentures or in connection with an Exempt Issuance), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re classification.

b) Subsequent Equity Sales. If, at any time while this Debenture is outstanding, the Company or any Subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the "Base Conversion Price" and such issuances, collectively, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 5(b) in respect of an Exempt Issuance. If the Company enters into a Variable Rate Transaction, despite the prohibition set forth in the Purchase Agreement, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Company shall notify the Holder in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 5(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 5(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to the other subsections of this Section 5, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Debenture immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

d) Pro Rata Distributions. During such time as this Debenture is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Debenture, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Debenture immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

e) Fundamental Transaction. If, at any time while this Debenture is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Debenture, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 4(d) on the conversion of this Debenture), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Debenture is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 4(d) on the conversion of this Debenture). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one (1) share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Debenture following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Debenture and the other Transaction Documents (as defined in the Purchase Agreement) in accordance with the provisions of this Section 5(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Debenture, deliver to the Holder in exchange for this Debenture a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Debenture which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Debenture (without regard to any limitations on the conversion of this Debenture) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Debenture immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Debenture and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Debenture and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 5 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 5, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Company) issued and outstanding.

g) Notice to the Holder.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 5, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of this Debenture, and shall cause to be delivered to the Holder at its last address as it shall appear upon the Debenture Register, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert this Debenture during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 6. [RESERVED]

Section 7. Negative Covenants. As long as any portion of this Debenture remains outstanding, unless the holders of at least 50.1% in principal amount of the then outstanding Debentures shall have otherwise given prior written consent, the Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including, but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

c) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock or Common Stock Equivalents other than as to (i) the Conversion Shares as permitted or required under the Transaction Documents and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Company, provided that such repurchases shall not exceed an aggregate of $150,000, or such greater amount as is approved by the Board of Directors, for all officers and directors during the term of this Debenture;

e) repay, repurchase or offer to repay, repurchase or otherwise acquire any Indebtedness, other than the Debentures if on a pro-rata basis; or

f) pay cash dividends or distributions on any equity securities of the Company;

g) enter into any transaction with any Affiliate of the Company which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval); or

h) enter into any agreement with respect to any of the foregoing.

Section 8. Events of Default.

a) "Event of Default" means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. any default in the payment of (A) the principal amount of any Debenture or (B) liquidated damages and other amounts owing to a Holder on any Debenture, as and when the same shall become due and payable (whether on a Conversion Date or the Maturity Date or by acceleration or otherwise);

ii. the Company shall fail to observe or perform any other covenant or agreement contained in the Debentures (other than a breach by the Company of its obligations to deliver shares of Common Stock to the Holder upon conversion, which breach is addressed in clause (x) below) which failure is not cured, if possible to cure, within the earlier to occur of (A) 5 Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) 20 Trading Days after the Company has become or should have become aware of such failure;

iii. a default or event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur under (A) any of the Transaction Documents or (B) any other material agreement, lease, document or instrument to which the Company or any Subsidiary is obligated (and not covered by clause (vi) below);

iv. any representation or warranty made in this Debenture, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

v. after the effectiveness of the Plan, the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) shall be subject to a Bankruptcy Event;

vi. the Company or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than $250,000, whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

vii. the Common Stock shall not be eligible for listing or quotation for trading on a Trading Market and shall not be eligible to resume listing or quotation for trading thereon within fifteen Trading Days;

viii. the Company shall be a party to any Change of Control Transaction or Fundamental Transaction or shall agree to sell or dispose of all or in excess of 33% of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction);

ix. at any time after six months after the date hereof the Company does not meet the current public information requirements under Rule 144 in respect of the Underlying Shares;

x . the Company shall fail for any reason to deliver certificates to a Holder prior to the fifth Trading Day after a Conversion Date pursuant to Section 4(c) or the Company shall provide at any time notice to the Holder, including by way of public announcement, of the Company's intention to not honor requests for conversions of any Debentures in accordance with the terms hereof; or

xi. any monetary judgment, writ or similar final process shall be entered or filed against the Company, any subsidiary or any of their respective property or other assets for more than $150,000, and such judgment, writ or similar fmal process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days.

b) Remedies Upon Event of Default. If any Event of Default occurs, the outstanding principal amount of this Debenture, plus, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash at the Mandatory Default Amount. Commencing 5 days after the occurrence of any Event of Default that results in the eventual acceleration of this Debenture, the interest rate on this Debenture shall accrue at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted under applicable law. Upon the payment in full of the Mandatory Default Amount, the Holder shall promptly surrender this Debenture to or as directed by the Company. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Debenture until such time, if any, as the Holder receives full payment pursuant to this Section 8(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 9. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder, including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, by email attachment, or sent by a nationally recognized overnight courier service, addressed to the Company, at the address set forth above, or such other facsimile number, email address, or address as the Company may specify for such purposes by notice to the Holder delivered in accordance with this Section 9(a). Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile, by email attachment, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or email address or address of the Holder appearing on the books of the Company, or if no such facsimile number or email attachment or address appears on the books of the Company, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment to the email address set forth on the signature pages attached hereto prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment to the email address set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Debenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, liquidated damages, as applicable, on this Debenture at the time, place, and rate, and in the coin or currency, herein prescribed. This Debenture is a direct debt obligation of the Company. This Debenture ranks pari passu with all other Debentures now or hereafter issued under the terms set forth herein.

c) Lost or Mutilated Debenture. If this Debenture shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Debenture, or in lieu of or in substitution for a lost, stolen or destroyed Debenture, a new Debenture for the principal amount of this Debenture so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Debenture, and of the ownership hereof, reasonably satisfactory to the Company.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Debenture shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Debenture and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Debenture or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Debenture, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Debenture shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Debenture. The failure of the Company or the Holder to insist upon strict adherence to any term of this Debenture on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Debenture on any other occasion. Any waiver by the Company or the Holder must be in writing.

f) Severability. If any provision of this Debenture is invalid, illegal or unenforceable, the balance of this Debenture shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal on this Debenture as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Debenture, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Debenture and shall not be deemed to limit or affect any of the provisions hereof.

i) Secured Obligation. The obligations of the Company under this Debenture are secured by all assets of the Company and each Subsidiary pursuant to the Security Agreement, dated as of even date herewith between the Company, the Subsidiaries of the Company and the Secured Parties (as defined therein).

****

(Signature Pages Follow)

IN WITNESS WHEREOF, the Company has caused this Debenture to be duly executed by a duly authorized officer as of the date first above indicated.

SG BLOCKS, INC.

By: /s/ Paul M. Galvin
Name: Paul M. Galvin
Title: Chief Executive Officer
Facsimile No. for delivery of Notices: 615-776-3657

ANNEX A

NOTICE OF CONVERSION

The undersigned hereby elects to convert principal under the Original Issue Discount Senior Secured Convertible Debenture due on the Maturity Date of SG Blocks, Inc., a Delaware corporation (the "Company"), into shares of common stock (the "Common Stock"), of the Company according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by the Company in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

By the delivery of this Notice of Conversion the undersigned represents and warrants to the Company that its ownership of the Common Stock does not exceed the amounts specified under Section 4 of this Debenture, as determined in accordance with Section 13(d) of the Exchange Act.

The undersigned agrees to comply with the prospectus delivery requirements under the applicable securities laws in connection with any transfer of the aforesaid shares of Common Stock.

Conversion calculations:

Date to Effect Conversion:

Principal Amount of Debenture to be Converted:

Number of shares of Common Stock to be issued:

Signature:

Name:

Address for Delivery of Common Stock Certificates:

Or

DWAC Instructions:

Broker No:_________________

Account No:_______________

Schedule 1

CONVERSION SCHEDULE

This Original Issue Discount Senior Secured Convertible Debentures due on the Maturity Date in the original principal amount of $[$1,750,000] is issued by SG Blocks, Inc., a Delaware corporation. This Conversion Schedule reflects conversions made under Section 4 of the above referenced Debenture.

Dated:

Date of Conversion (or for first entry, Original Issue Date)	Amount of Conversion	Aggregate Principal Amount Remaining Subsequent to Conversion (or original Principal Amount)	Company Attest

Exhibit 4.4

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement") is dated as of June __, 2016, between SG Blocks, Inc., a Delaware corporation (the "Company"), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a "Purchaser" and collectively, the "Purchasers").

WHEREAS, concurrently with this Agreement the Company's Amended Plan of Reorganization (the "Plan"); in Case No. 15-12790 (JLG) (the "Bankruptcy Case"), in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has become effective pursuant to the *Order Confirming Debtors' Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code*, entered by the Bankruptcy Court on June 3, 2016;

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 promulgated thereunder, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

ARTICLE I.
DEFINITIONS

1 . 1 Definitions. In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Debentures (as defined herein), and (b) the following terms have the meanings set forth in this Section 1.1:

"Acquiring Person" shall have the meaning ascribed to such term in Section 4.7.

"Action" shall have the meaning ascribed to such term in Section 3.1(j).

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Board of Directors" means the board of directors of the Company.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Closing" means the closing of the purchase and sale of the Securities pursuant to Section 2.1.

"Closing Date" means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers' obligations to pay the Subscription Amount and (ii) the Company's obligations to deliver the Securities, in each case, have been satisfied or waived, but in no event later than the third Trading Day following the date hereof.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Company Counsel" means counsel to the Company reasonably acceptable to the Purchaser.

"Conversion Price" shall have the meaning ascribed to such term in the Debentures.

"Conversion Shares" shall have the meaning ascribed to such term in the Debentures.

"Debentures" means the Original Issue Discount Senior Secured Convertible Debentures on the Maturity Date (as defined therein), subject to the terms therein, issued by the Company to the Purchasers hereunder, in the form of Exhibit A attached hereto.

"DIP Credit Facility" shall mean that certain credit facility with a principal amount equal to $600,000 plus interest and unpaid fees and costs issued pursuant to the DIP Financing Order (as defined in the Plan).

"Disclosure Schedules" shall have the meaning ascribed to such term in Section 3.1.

"EGS" means Ellenoff Grossman & Schole LLP, with offices located at 1345 Ave. of the Americas, New York, New York 10105.

"Effective Date" means the earliest of the date that (a) all of the Underlying Shares have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions or (b) following the one year anniversary of the Closing Date provided that a holder of Underlying Shares is not an Affiliate of the Company, or (c) all of the Underlying Shares may be sold pursuant to an exemption from registration under Section 4(1) of the Securities Act without volume or manner-of-sale restrictions and Company Counsel has delivered to such holders a standing written unqualified opinion that resales may then be made by such holders of the Underlying Shares pursuant to such exemption which opinion shall be in form and substance reasonably acceptable to such holders.

"Evaluation Date" shall have the meaning ascribed to such term in Section 3.1(r).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Exchange Agreement" means the exchange agreement, dated on or about the date hereof, between the Company and the signatories thereto.

"Exempt Issuance" means the issuance of (a) securities issued pursuant to the Plan; (b) shares of Common Stock or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose; (c) shares of Common Stock or options (subject to adjustment for forward and reverse stock splits and the like that occur after the date hereof) to consultants and/or service providers in connection with Company projects, as approved by the Board of Directors: (d) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities; and (e) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended. "GAAP" shall have the meaning ascribed to such term in Section 3.1(h). "Indebtedness" shall have the meaning ascribed to such term in Section 3.1(aa).

"Intellectual Property Rights" shall have the meaning ascribed to such term in Section 3.1(o).

"Legend Removal Date" shall have the meaning ascribed to such term in Section 4.1(c).

"Liens" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

"Material Adverse Effect" shall have the meaning assigned to such term in Section 3.1(b).

"Material Permits" shall have the meaning ascribed to such term in Section 3.1(m).

"Maximum Rate" shall have the meaning ascribed to such term in Section 5.17.

"Participation Maximum" shall have the meaning ascribed to such term in Section 4.12(a).

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Pre-Notice" shall have the meaning ascribed to such term in Section 4.12(b).

"Principal Amount" means, as to each Purchaser, the amounts set forth below such Purchaser's signature block on the signature pages hereto next to the heading "Principal Amount," in United States Dollars, which shall equal such Purchaser's Subscription Amount multiplied by 1.25.

"Pro Rata Portion" shall have the meaning ascribed to such term in Section 4.12(e).

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Public Information Failure" shall have the meaning ascribed to such term in Section 4.3(b).

"Public Information Failure Payments" shall have the meaning ascribed to such term in Section 4.3(b).

"Purchaser Party" shall have the meaning ascribed to such term in Section 4.10.

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(e).

"Required Minimum" means, as of any date, the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Shares issuable upon conversion in full of all outstanding Debentures, ignoring any conversion set forth therein, and assuming that the Conversion Price is at all times on and after the date of determination 75% of the then Conversion Price on the Trading Day immediately prior to the date of determination.

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"SEC Reports" shall have the meaning ascribed to such term in Section 3.1(h). "Securities" means the Debentures and the Underlying Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Security Agreement" means the Security Agreement, dated the date hereof, among the Company and the Purchasers, in the form of Exhibit D attached hereto.

"Security Documents" shall mean the Security Agreement, the Subsidiary Guarantees, the original Pledged Securities, along with medallion guaranteed executed blank stock powers to the Pledged Securities, and any other documents and filing required thereunder in order to grant the Purchasers a first priority security interest in the assets of the Company and the Subsidiaries as provided in the Security Agreement, including all UCC-1 filing receipts.

"Short Sales" means all "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

"Subscription Amount" means, as to each Purchaser, the sum of (a) the aggregate amount to be paid for Debentures purchased hereunder and (b) the principal amount and accrued but unpaid interest and fees of the DIP Facility being exchanged hereunder, as specified below such Purchaser's name on the signature page of this Agreement and next to the heading "Subscription Amount," in United States dollars and in immediately available funds.

"Subsequent Financing" shall have the meaning ascribed to such term in Section 4.12(a).

"Subsequent Financing Notice" shall have the meaning ascribed to such term in Section 4.12(b).

"Subsidiary" means any subsidiary of the Company as set forth on Schedule 3.1(a) and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

"Subsidiary Guarantee" means the Subsidiary Guarantee, dated the date hereof, by each Subsidiary in favor of the Purchasers, in the form of Exhibit E attached hereto.

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTC Markets Inc., or the OTC Bulletin Board (or any successors to any of the foregoing).

"Transaction Documents" means this Agreement, the Debentures, the Security Agreement, the Subsidiary Guarantee, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Transfer Agent" means American Stock Transfer & Trust Company LLC, the current transfer agent of the Company, with a mailing address of: Operations Center, 6201 15th Avenue, Brooklyn, NY 11219 and any successor transfer agent of the Company.

"Underlying Shares" means the shares of Common Stock issued and issuable upon conversion or redemption of the Debentures and issued.

"Variable Rate Transaction" shall have the meaning ascribed to such term in Section 4.13(b).

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date on which the Common Stock actually trades) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTC Bulletin Board is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the "Pink Sheets" published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

ARTICLE II.
PURCHASE AND SALE

2.1 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, up to an aggregate of $[1,750,000] in principal amount of the Debentures (corresponding to an aggregate Subscription Amount of up to $[1,400,000]. Each Purchaser shall deliver to the Company, via wire transfer or a certified check, immediately available funds equal to such Purchaser's cash Subscription Amount as set forth on the signature page hereto executed by such Purchaser along with the surrender of the DIP Credit Facility, and the Company shall deliver to each Purchaser its respective Debenture, and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction or waiver of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur at the offices of EGS or such other location as the parties shall mutually agree.

2.2 Deliveries.

(a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:

(i) this Agreement duly executed by the Company;

(ii) a Debenture with a principal amount equal to such Purchaser's Principal Amount, registered in the name of such Purchaser; and

(iii) the Security Agreement, duly executed by the Company and each Subsidiary, along with all of the Security Documents, including the Subsidiary Guarantee.

(b) On or prior to the Closing Date, each Purchaser shall deliver or cause to be delivered to the Company, the following:

(i) this Agreement duly executed by such Purchaser;

(ii) such Purchaser's Subscription Amount by wire transfer to the account specified in writing by the Company;

(iii) surrender of the documents representing the DIP Credit Facility; and

(iv) the Security Agreement duly executed by such Purchaser.

2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects on the Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to the Closing Date shall have been performed; and

(iii) the delivery by each Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The respective obligations of the Purchasers hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed;

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;

(iv) there shall have been no Material Adverse Effect with respect to the Company since the date hereof; and

(v) from the date hereof to the Closing Date, a banking moratorium shall not have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of such Purchaser, makes it impracticable or inadvisable to purchase the Securities at the Closing.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to each Purchaser:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company are set forth on Schedule 3.1(a). The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect"; and provided, that changes in the trading price of the Common Stock shall not, in and of itself, constitute a Material Adverse Effect) and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. Except as provided in Schedule 3.1(d), the execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not: (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any material agreement, credit facility, debt or other material instrument (evidencing a Company or Subsidiary debt or otherwise) or other material understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.6 of this Agreement, (ii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Securities and the listing of the Underlying Shares for trading thereon in the time and manner required thereby, (iii) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws and (iv) as set forth on Schedule 3.1(e) (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Company has reserved from its duly authorized capital stock a number of shares of Common Stock for issuance of the Underlying Shares at least equal to the Required Minimum on the date hereof.

(g) Capitalization. The capitalization of the Company is as described on Schedule 3.1(g). Schedule 3.1(g) also includes the number of shares of Common Stock owned beneficially, and of record, by Affiliates of the Company as of the date hereof. Except as provided in Schedule 3.1(g), the Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. Except as provided in Schedule 3.1(g), no Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as provided in Schedule 3.1(g) or as a result of the purchase and sale of the Securities, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. Except as set forth in Schedule 3.1(g), the issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) SEC Reports; Financial Statements. Except as described on Schedule 3.1(h), the Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports"). Except as described on Schedule 3.1(h), such SEC Reports were filed on a timely basis or the Company received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Except as provided in Schedule 3.1(i) since the effective date of the Plan, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement or as set forth on Schedule 3.1(i), no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made.

(j) Litigation. Except as provided in Schedule 3.1(j), there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. Except as set forth on Schedule 3.1(l) or as has been resolved by the effectiveness of the Plan, neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(n) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) the Liens disclosed on Schedule 3.1(n), (ii) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (iii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(o) Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights as described in the SEC Reports as necessary or required for use in connection with their respective businesses and which the failure to so have could have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(p) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage at least equal to the aggregate Subscription Amount. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(q) Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from providing for the borrowing of money from or lending of money to, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of $120,000 other than for: (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(r) Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

(s) Certain Fees. Except as provided in Schedule 3.1(s), no brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiaries to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(t) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(u) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(v) Registration Rights. Except as set forth on Schedule 3.1(v), no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company or any Subsidiaries.

(w) Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(g) of the Exchange Act, and, except as set forth on Schedule 3.1(w), the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not, in the 12 months preceding the date hereof, received notice from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements.

(x) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(y) Disclosure. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(z) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(aa) Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder: (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. Schedule 3.1(aa) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of $50,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of $50,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(bb) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

(cc) No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered the Securities for sale only to the Purchasers and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(dd) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(ee) Accountants. The Company's accounting firm is set forth on Schedule 3.1(ee) of the Disclosure Schedules. To the knowledge and belief of the Company, such accounting firm: (i) is a registered public accounting firm as required by the Exchange Act and (ii) shall express its opinion with respect to the financial statements to be included in the Company's Annual Report for the fiscal year ended December 31, 2016.

(ff) Seniority. As of the Closing Date, no Indebtedness or other claim against the Company is senior to the Debentures in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(gg) No Disagreements with Accountants and Lawyers. There are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(hh) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(ii) Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding (except for Sections 3.2(f) and 4.15 hereof), it is understood and acknowledged by the Company that: (i) none of the Purchasers has been asked by the Company to agree, nor has any Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term, (ii) past or future open market or other transactions by any Purchaser, specifically including, without limitation, Short Sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities, (iii) any Purchaser, and counter-parties in "derivative" transactions to which any such Purchaser is a party, directly or indirectly, may presently have a "short" position in the Common Stock and (iv) each Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction; provided, that no Purchaser shall engage in a Net Short Sale (as defined in Section 4.15) until such Purchaser no longer holds any Debentures. The Company further understands and acknowledges that (y) one or more Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Underlying Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

(jj) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Company's placement agent in connection with the placement of the Securities.

(kk) Stock Option Plans. Each stock option granted by the Company under the Company's stock option plan was granted (i) in accordance with the terms of the Company's stock option plan or the terms of the stock option agreements between the Company and the optionee and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(ll) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(mm) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

(nn) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(oo) No Disqualification Events. With respect to the Securities to be offered and sold hereunder in reliance on Rule 506 under the Securities Act, none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Purchasers a copy of any disclosures provided thereunder.

(pp) Other Covered Persons. The Company is not aware of any person (other than any Issuer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Regulation D Securities.

(qq) Notice of Disqualification Events. The Company will notify the Purchasers in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

3.2 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein):

(a) Organization; Authority. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Own Account. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Purchaser's right to sell the Securities in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time such Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it converts any Debentures it will be an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act.

(d) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) General Solicitation. Such Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(f) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, such Purchaser has not directly or indirectly, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser, executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that such Purchaser first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material terms of the transactions contemplated hereunder and ending immediately prior to the execution hereof. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement. Other than to other Persons party to this Agreement, such Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect Short Sales or similar transactions in the future.

The Company acknowledges and agrees that the representations contained in Section 3.2 shall not modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transaction contemplated hereby.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and shall make the representations set forth in Section 3.2, and then shall have the rights and obligations of a Purchaser under this Agreement.

(b) The Purchasers agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities in the following form:

[NEITHER] THIS SECURITY [NOR THE SECURITIES INTO WHICH THIS SECURITY IS [EXERCISABLE] [CONVERTIBLE]] HAS [NOT] BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON [EXERCISE] [CONVERSION] OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and who agrees to be bound by the provisions of this Agreement and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities.

(c) Certificates evidencing the Underlying Shares shall not contain any legend (including the legend set forth in Section 4.1(b) hereof): (i) while a registration statement covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Underlying Shares pursuant to Rule 144, (iii) if such Underlying Shares are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Underlying Shares and without volume or manner-of-sale restrictions or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent promptly after the Effective Date if required by the Transfer Agent to effect the removal of the legend hereunder. If all or any portion of a Debenture is converted at a time when there is an effective registration statement to cover the resale of the Underlying Shares, or if such Underlying Shares may be sold under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Underlying Shares and without volume or manner-of-sale restrictions or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Underlying Shares shall be issued free of all legends. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 4.1(c), it will, no later than three Trading Days following the delivery by a Purchaser to the Company or the Transfer Agent of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend (such third Trading Day, the "Legend Removal Date"), deliver or cause to be delivered to such Purchaser a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4. Certificates for Underlying Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser's prime broker with the Depository Trust Company System as directed by such Purchaser.

(d) In addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, for each $1,000 of Underlying Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 4.1(c), $10 per Trading Day (increasing to $15 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such certificate is delivered without a legend. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Company's failure to deliver certificates representing any Securities as required by the Transaction Documents, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

(e) Each Purchaser, severally and not jointly with the other Purchasers, agrees with the Company that such Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

4.2 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Underlying Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.3 Furnishing of Information; Public Information.

(a) If the Common Stock is not registered under Section 12(b) or 12(g) of the Exchange Act on the date hereof, the Company agrees to cause the Common Stock to be registered under Section 12(g) of the Exchange Act on or before the 60th calendar day following the date hereof. Following the 60th date following the date hereof until the time that no Purchaser owns Securities, the Company covenants to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

(b) At any time during the period commencing from the six (6) month anniversary of the date hereof and ending at such time that all of the Securities may be sold without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company shall fail for any reason to satisfy the current public information requirement under Rule 144(c) (a "Public Information Failure") then, in addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Securities, an amount in cash equal to two percent (2.0%) of the aggregate Subscription Amount of such Purchaser's Securities on the day of a Public Information Failure and on every thirtieth (30th) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for the Purchasers to transfer the Underlying Shares pursuant to Rule 144. The payments to which a Purchaser shall be entitled pursuant to this Section 4.3(b) are referred to herein as "Public Information Failure Payments." Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3rd) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Public Information Failure, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

4.4 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.5 Conversion Procedures. The form of Notice of Conversion included in the Debentures set forth the totality of the procedures required of the Purchasers in order to convert the Debentures. No additional legal opinion, other information or instructions shall be required of the Purchasers to convert their Debentures. The Company shall honor conversions of the Debentures and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.6 Securities Laws Disclosure; Publicity. The Company shall (a) by 9:30 a.m. (New York City time) on the fourth Trading Day immediately following the date hereof, issue a press release disclosing the material terms of the transactions contemplated hereby, and (b) file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the Commission within the time required by the Exchange Act. From and after the issuance of such press release, the Company represents to the Purchasers that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. The Company and each Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser, or without the prior consent of each Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except: (a) as required by federal securities law in connection with the filing of final Transaction Documents with the Commission, (b) to the extent requested by the Commission and (c) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchasers with prior notice of such disclosure permitted under clauses (b) and (c).

4.7 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Purchaser is an "Acquiring Person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

4.8 Non-Public Information. [Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company covenants and agrees that neither it, nor any other Person acting on its behalf, will provide any Purchaser or its agents or counsel with any information that the Company believes constitutes material non-public information, unless prior thereto such Purchaser shall have entered into a written agreement with the Company regarding the confidentiality and use of such information. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.[1]

4.9 Use of Proceeds. Except as set forth on Schedule 4.9 attached hereto, the Company shall use the net proceeds from the sale of the Securities hereunder as provided in the Plan and for working capital purposes and except as provided in the Plan shall not use such proceeds: (a) for the satisfaction of any portion of the Company's debt (b) for the redemption of any Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation or (d) in violation of FCPA or OFAC regulations.

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[1] Note to draft: to be discussed; Purchaser's affiliates will be on the Company's board of directors.

4.10 Indemnification of Purchasers. Subject to the provisions of this Section 4.10, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which constitutes fraud, gross negligence, willful misconduct or malfeasance). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.10 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.11 Reservation and Listing of Securities.

(a) The Company shall maintain a reserve from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date, then the Board of Directors shall use commercially reasonable efforts to amend the Company's certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than the 120th day after such date.

(c) The Company shall, if applicable: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market as soon as commercially reasonable thereafter, (iii) provide to the Purchasers evidence of such listing or quotation and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market.

4.12 Participation in Future Financing.

(a) From the date hereof until the 18-month anniversary of the Closing Date, upon any issuance by the Company or any of its Subsidiaries of Common Stock, Common Stock Equivalents for cash consideration, Indebtedness or a combination of units hereof (a "Subsequent Financing"), each Purchaser shall have the right to participate in up to an amount of the Subsequent Financing equal to 100% of such Subsequent Financing (the "Participation Maximum") on the same terms, conditions and price provided for in the Subsequent Financing.

(b) At least five (5) Trading Days prior to the closing of the Subsequent Financing, the Company shall deliver to each Purchaser a written notice of its intention to effect a Subsequent Financing ("Pre-Notice"), which Pre-Notice shall ask such Purchaser if it wants to review the details of such financing (such additional notice, a "Subsequent Financing Notice"). Upon the request of a Purchaser, and only upon a request by such Purchaser, for a Subsequent Financing Notice, the Company shall promptly, but no later than one (1) Trading Day after such request, deliver a Subsequent Financing Notice to such Purchaser. The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet or similar document relating thereto as an attachment.

(c) Any Purchaser desiring to participate in such Subsequent Financing must provide written notice to the Company by not later than 5:30 p.m. (New York City time) on the fifth (5th) Trading Day after all of the Purchasers have received the Pre-Notice that such Purchaser is willing to participate in the Subsequent Financing, the amount of such Purchaser's participation, and representing and warranting that such Purchaser has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. If the Company receives no such notice from a Purchaser as of such fifth (5th) Trading Day, such Purchaser shall be deemed to have notified the Company that it does not elect to participate.

(d) If by 5:30 p.m. (New York City time) on the fifth (5th) Trading Day after all of the Purchasers have received the Pre-Notice, notifications by the Purchasers of their willingness to participate in the Subsequent Financing (or to cause their designees to participate) is, in the aggregate, less than the total amount of the Subsequent Financing, then the Company may effect the remaining portion of such Subsequent Financing on the terms and with the Persons set forth in the Subsequent Financing Notice.

(e) If by 5:30 p.m. (New York City time) on the fifth (5th) Trading Day after all of the Purchasers have received the Pre-Notice, the Company receives responses to a Subsequent Financing Notice from Purchasers seeking to purchase more than the aggregate amount of the Participation Maximum, each such Purchaser shall have the right to purchase its Pro Rata Portion (as defined below) of the Participation Maximum. "Pro Rata Portion" means the ratio of (x) the Subscription Amount of Securities purchased on the Closing Date by a Purchaser participating under this Section 4.12 and (y) the sum of the aggregate Subscription Amounts of Securities purchased on the Closing Date by all Purchasers participating under this Section 4.12.

(f) The Company must provide the Purchasers with a second Subsequent Financing Notice, and the Purchasers will again have the right of participation set forth above in this Section 4.12, if the Subsequent Financing subject to the initial Subsequent Financing Notice is not consummated for any reason on the terms set forth in such Subsequent Financing Notice within thirty (30) Trading Days after the date of the initial Subsequent Financing Notice.

(g) The Company and each Purchaser agree that if any Purchaser elects to participate in the Subsequent Financing, the transaction documents related to the Subsequent Financing shall not include any term or provision whereby such Purchaser shall be required to agree to any restrictions on trading as to any of the Securities purchased hereunder or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, this Agreement, without the prior written consent of such Purchaser.

(h) Notwithstanding anything to the contrary in this Section 4.12 and unless otherwise agreed to by such Purchaser, the Company shall either confirm in writing to such Purchaser that the transaction with respect to the Subsequent Financing has been abandoned or shall publicly disclose its intention to issue the securities in the Subsequent Financing, in either case in such a manner such that such Purchaser will not be in possession of any material, non-public information, by the tenth (10th) Business Day following delivery of the Subsequent Financing Notice. If by such tenth (10th) Business Day, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, and no notice regarding the abandonment of such transaction has been received by such Purchaser, such transaction shall be deemed to have been abandoned and such Purchaser shall not be deemed to be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries.

(i) Notwithstanding the foregoing, this Section 4.12 shall not apply in respect of (i) an Exempt Issuance, or (ii) an underwritten public offering of Common Stock.

4.13 Subsequent Equity Sales.

(a) From the date hereof until 90 days after the Closing Date, neither the Company nor any Subsidiary shall issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents.

(b) From the date hereof until the Debentures are no longer outstanding, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents (or a combination of units thereof) involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(c) Notwithstanding the foregoing, this Section 4.13 shall not apply in respect of an Exempt Issuance, except that no Variable Rate Transaction shall be an Exempt Issuance.

4.14 Equal Treatment of Purchasers. No consideration (including any modification of any Transaction Document) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration is also offered to all of the parties to this Agreement. Further, the Company shall not make any payment of principal or interest on the Debentures in amounts which are disproportionate to the respective principal amounts outstanding on the Debentures at any applicable time. The Company shall not amend, supplement or modify any Transaction Document to which any party to this Agreement is a party unless either (x) such amendment, supplement or modification is offered to all Purchasers or (y) such amendment, supplement or modification could not reasonably be expected to adversely affect the rights or interests of any such other parties. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise. Each Purchaser agrees that the provisions of this Section 4.14 shall not be amended without the prior written consent of each Purchaser to this Agreement who is adversely affected thereby.

4.15 Certain Transactions and Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, covenants that neither it, nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.6, such Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents and the Disclosure Schedules. Notwithstanding the foregoing, no Purchaser makes any representation, warranty or covenant hereby that it will not engage in Short Sales in the securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced as described in Section 4.6; provided, however, each Purchaser agrees, severally and not jointly with any other Purchasers, that such Purchaser will not enter into any Net Short Sales (as hereinafter defined) from the period commencing on the Closing Date and ending on the date that such Purchaser no longer holds any Debentures. For purposes of this Section 4.15, a "Net Short Sale" by any Purchaser shall mean a sale of Common Stock by such Purchaser that is marked as a short sale and that is made at a time where there is no equivalent offsetting long position in Common Stock held by such Purchaser. For purposes of determining whether there is an equivalent offsetting long position in Common Stock held by the Purchaser, Underlying Shares that have not yet been converted pursuant to the Debentures shall be deemed to be held long by the Purchaser, and the amount of shares of Common Stock held in a long position shall be all unconverted Underlying Shares (ignoring any exercise limitations included therein) issuable to such Purchaser on such date, plus any shares of Common Stock or Common Stock Equivalents otherwise then held by such Purchaser. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

4.16 Form D; Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon request of any Purchaser. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers at the Closing under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Purchaser.

4.17 Capital Changes. Until the one year anniversary of the Closing Date, the Company shall not undertake a reverse or forward stock split or reclassification of the Common Stock without the prior written consent of the Purchasers holding a majority in principal amount outstanding of the Debentures.

ARTICLE V.
MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Closing has not been consummated on or before June __, 2016 provided, however, that such termination will not affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. At the Closing, the Company has agreed to reimburse Hillair Capital Management LLC ("Hillair") $_________ for its legal fees and expenses. Accordingly, in lieu of the foregoing payments, the aggregate amount that Hillair's fund is to pay for the Securities at the Closing shall be reduced by $__________ in lieu thereof. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion or exercise notice delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto or email attachment on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchasers holding at least 75% in interest of the Securities then outstanding, which waiver, modification, supplement or amendment shall be binding on all holders of the Securities then outstanding. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.10 and this Section 5.8.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.10, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

5.10 Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Securities.

5.11 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that in the case of a rescission of a conversion of a Debenture, the applicable Purchaser shall be required to return any shares of Common Stock subject to any such rescinded conversion.

5.14 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.15 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.16 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.17 Usury. To the extent it may lawfully do so, the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any claim, action or proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by the Company to any Purchaser with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by such Purchaser to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Purchaser's election.

5.18 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. For reasons of administrative convenience only, each Purchaser and its respective counsel have chosen to communicate with the Company through EGS. EGS does not represent any of the Purchasers and only represents Hillair. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers.

5.19 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

5.20 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.21 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

5.22 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

SG BLOCKS, INC.

Address for Notice:
912 Bluff Road
Brentwood, TN 37027

By: /s/ Paul M. Galvin
Name: Paul M. Galvin
Title: Chief Executive Officer

Fax:

With a copy to (which shall not constitute notice):

David D. Watson, Esq.
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, OH 44114-1291

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

[PURCHASER SIGNATURE PAGES TO SGBX SECURITIES PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: ____________________

Signature of Authorized Signatory of Purchaser: ____________________

Name of Authorized Signatory: ____________________

Title of Authorized Signatory: ____________________

Email Address of Authorized Signatory: ____________________

Facsimile Number of Authorized Signatory: ____________________

Address for Notice to Purchaser:

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Subscription Amount:__________________

Cash:_________________________
DIP Credit Facility (including interest and fees): ____________________

Principal Amount (*1.25 x Subscription Amount*):_______________

EIN Number: ________________________

[SIGNATURE PAGES CONTINUE]

Exhibit 4.5

SUBSIDIARY GUARANTEE

SUBSIDIARY GUARANTEE, dated as of May __, 2016 (this "Guarantee"), made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "Guarantors"), in favor of the purchasers signatory (together with their permitted assigns, the "Purchasers") to that certain Securities Purchase Agreement, dated as of the date hereof, between SG Blocks, Inc., a Delaware corporation (the "Company") and the Purchasers.

W I T N E S S E T H:

WHEREAS, pursuant to that certain Securities Purchase Agreement, dated as of the date hereof, by and between the Company and the Purchasers (the "Purchase Agreement"), the Company has agreed to sell and issue to the Purchasers, and the Purchasers have agreed to purchase from the Company the Debentures, subject to the terms and conditions set forth therein; and

WHEREAS, each Guarantor will directly benefit from the extension of credit to the Company represented by the issuance of the Debentures; and

NOW, THEREFORE, in consideration of the premises and to induce the Purchasers to enter into the Purchase Agreement and to carry out the transactions contemplated thereby, each Guarantor hereby agrees with the Purchasers as follows:

1. Definitions. Unless otherwise defined herein, terms defined in the Purchase Agreement and used herein shall have the meanings given to them in the Purchase Agreement. The words "hereof," "herein," "hereto" and "hereunder" and words of similar import when used in this Guarantee shall refer to this Guarantee as a whole and not to any particular provision of this Guarantee, and Section and Schedule references are to this Guarantee unless otherwise specified. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. The following terms shall have the following meanings:

"Guarantee" means this Subsidiary Guarantee, as the same may be amended, supplemented or otherwise modified from time to time.

"Obligations" means, in addition to all other costs and expenses of collection incurred by Purchasers in enforcing any of such Obligations and/or this Guarantee, all of the liabilities and obligations (primary, secondary, direct, contingent, sole, joint or several) due or to become due, or that are now or may be hereafter contracted or acquired, or owing to, of the Company or any Guarantor to the Purchasers, including, without limitation, all obligations under this Guarantee, the Debentures and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith, in each case, whether now or hereafter existing, voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from any of the Purchasers as a preference, fraudulent transfer or otherwise as such obligations may be amended, supplemented, converted, extended or modified from time to time. Without limiting the generality of the foregoing, the term "Obligations" shall include, without limitation: (i) principal of, and interest on the Debentures and the loans extended pursuant thereto; (ii) any and all other fees, indemnities, costs, obligations and liabilities of the Company or any Guarantor from time to time under or in connection with this Guarantee, the Debentures and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith; and (iii) all amounts (including but not limited to post-petition interest) in respect of the foregoing that would be payable but for the fact that the obligations to pay such amounts are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Company or any Guarantor.

2. Guarantee.

(a) Guarantee.

(i) The Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantee to the Purchasers and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations.

(ii) Anything herein or in any other Transaction Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Transaction Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws, including laws relating to the insolvency of debtors, fraudulent conveyance or transfer or laws affecting the rights of creditors generally (after giving effect to the right of contribution established in Section 2(b)).

(iii) Each Guarantor agrees that the Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of the Purchasers hereunder.

(iv) The guarantee contained in this Section 2 shall remain in full force and effect until all the Obligations and the obligations of each Guarantor under the guarantee contained in this Section 2 shall have been satisfied by indefeasible payment in full.

(v) No payment made by the Company, any of the Guarantors, any other guarantor or any other Person or received or collected by the Purchasers from the Company, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Obligations or any payment received or collected from such Guarantor in respect of the Obligations), remain liable for the Obligations up to the maximum liability of such Guarantor hereunder until the Obligations are indefeasibly paid in full.

(vi) Notwithstanding anything to the contrary in this Guarantee, with respect to any defaulted non-monetary Obligations the specific performance of which by the Guarantors is not reasonably possible (e.g. the issuance of the Company's Common Stock), the Guarantors shall only be liable for making the Purchasers whole on a monetary basis for the Company's failure to perform such Obligations in accordance with the Transaction Documents.

(b) Right of Contribution. Subject to Section 2(c), each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2(c). The provisions of this Section 2(b) shall in no respect limit the obligations and liabilities of any Guarantor to the Purchasers and each Guarantor shall remain liable to the Purchasers for the full amount guaranteed by such Guarantor hereunder.

(c) No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by the Purchasers, no Guarantor shall be entitled to be subrogated to any of the rights of the Purchasers against the Company or any other Guarantor or any collateral security or guarantee or right of offset held by the Purchasers for the payment of the Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Company or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Purchasers by the Company on account of the Obligations are indefeasibly paid in full. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Purchasers, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Purchasers in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Purchasers, if required), to be applied against the Obligations, whether matured or unmatured, in such order as the Purchasers may determine.

(d) Amendments, Etc. With Respect to the Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Obligations made by the Purchasers may be rescinded by the Purchasers and any of the Obligations continued, and the Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Purchasers, and the Purchase Agreement and the other Transaction Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Purchasers may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by the Purchasers for the payment of the Obligations may be sold, exchanged, waived, surrendered or released. The Purchasers shall have no obligation to protect, secure, perfect or insure any Lien at any time held by them as security for the Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

(e) Guarantee Absolute and Unconditional. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof of reliance by the Purchasers upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Company and any of the Guarantors, on the one hand, and the Purchasers, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives to the extent permitted by law diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Company or any of the Guarantors with respect to the Obligations. Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Purchase Agreement or any other Transaction Document, any of the Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Purchasers, (b) any defense, set-off or counterclaim (other than a defense of payment or performance or fraud by Purchasers) which may at any time be available to or be asserted by the Company or any other Person against the Purchasers, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Company or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Company for the Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Purchasers may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as they may have against the Company, any other Guarantor or any other Person or against any collateral security or guarantee for the Obligations or any right of offset with respect thereto, and any failure by the Purchasers to make any such demand, to pursue such other rights or remedies or to collect any payments from the Company, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Company, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Purchasers against any Guarantor. For the purposes hereof, “demand” shall include the commencement and continuance of any legal proceedings.

(f) Reinstatement. The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Purchasers upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Company or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

(g) Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Purchasers without set-off or counterclaim in U.S. dollars at the address set forth or referred to in the Signature Pages to the Purchase Agreement.

3. Representations and Warranties. Each Guarantor hereby makes the following representations and warranties to Purchasers as of the date hereof:

(a) Organization and Qualification. The Guarantor is a corporation, duly incorporated, validly existing and in good standing under the laws of the applicable jurisdiction set forth on Schedule 1, with the requisite corporate power and authority to own and use its properties and assets and to carry on its business as currently conducted. The Guarantor has no subsidiaries other than those identified as such on the Disclosure Schedules to the Purchase Agreement. The Guarantor is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not, individually or in the aggregate, (x) adversely affect the legality, validity or enforceability of any of this Guaranty in any material respect, (y) have a material adverse effect on the results of operations, assets, prospects, or financial condition of the Guarantor or (z) adversely impair in any material respect the Guarantor's ability to perform fully on a timely basis its obligations under this Guaranty (a "Material Adverse Effect").

(b) Authorization; Enforcement. The Guarantor has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Guaranty, and otherwise to carry out its obligations hereunder. The execution and delivery of this Guaranty by the Guarantor and the consummation by it of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Guarantor. This Guaranty has been duly executed and delivered by the Guarantor and constitutes the valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(c) No Conflicts. The execution, delivery and performance of this Guaranty by the Guarantor and the consummation by the Guarantor of the transactions contemplated thereby do not and will not (i) conflict with or violate any provision of its Certificate of Incorporation or By-laws or (ii) conflict with, constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Guarantor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Guarantor is subject (including Federal and State securities laws and regulations), or by which any material property or asset of the Guarantor is bound or affected, except in the case of each of clauses (ii) and (iii), such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as could not, individually or in the aggregate, have or result in a Material Adverse Effect. The business of the Guarantor is not being conducted in violation of any law, ordinance or regulation of any governmental authority, except for violations which, individually or in the aggregate, do not have a Material Adverse Effect.

(d) Consents and Approvals. The Guarantor is not required to obtain any consent, waiver, authorization or order of, or make any filing or registration with, any court or other federal, state, local, foreign or other governmental authority or other person in connection with the execution, delivery and performance by the Guarantor of this Guaranty.

(e) Purchase Agreement. The representations and warranties of the Company set forth in the Purchase Agreement as they relate to such Guarantor, each of which is hereby incorporated herein by reference, are true and correct as of each time such representations are deemed to be made pursuant to such Purchase Agreement, and the Purchasers shall be entitled to rely on each of them as if they were fully set forth herein, provided that each reference in each such representation and warranty to the Company's knowledge shall, for the purposes of this Section 3, be deemed to be a reference to such Guarantor's knowledge.

(f) Foreign Law. Each Guarantor has consulted with appropriate foreign legal counsel with respect to any of the above representations for which non-U.S. law is applicable. Such foreign counsel have advised each applicable Guarantor that such counsel knows of no reason why any of the above representations would not be true and accurate. Such foreign counsel were provided with copies of this Subsidiary Guarantee and the Transaction Documents prior to rendering their advice.

4. Covenants.

(a) Each Guarantor covenants and agrees with the Purchasers that, from and after the date of this Guarantee until the Obligations shall have been indefeasibly paid in full, such Guarantor shall take, and/or shall refrain from taking, as the case may be, each commercially reasonable action that is necessary to be taken or not taken, as the case may be, so that no Event of Default (as defined in the Debentures) is caused by the failure to take such action or to refrain from taking such action by such Guarantor.

(b) So long as any of the Obligations are outstanding, unless Purchasers holding at least 50.1% of the aggregate principal amount of the then outstanding Debentures shall otherwise consent in writing, each Guarantor will not directly or indirectly on or after the date of this Guarantee:

i. except for the Permitted Indebtedness (as defined in the Debenture) enter into, create, incur, assume or suffer to exist any indebtedness for borrowed money of any kind, including but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

ii. except for the Permitted Liens (as defined in the Debenture) enter into, create, incur, assume or suffer to exist any liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

iii. amend its certificate of incorporation, bylaws or other charter documents so as to adversely affect any rights of any Purchaser;

iv. repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its securities or debt obligations;

v. pay cash dividends on any equity securities of the Company;

vi. enter into any transaction with any Affiliate of the Guarantor which would be required to be disclosed in any public filing of the Company with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval); or

vii. enter into any agreement with respect to any of the foregoing.

5. Miscellaneous.

(a) Amendments in Writing. None of the terms or provisions of this Guarantee may be waived, amended, supplemented or otherwise modified except in writing by the Purchasers.

(b) Notices. All notices, requests and demands to or upon the Purchasers or any Guarantor hereunder shall be effected in the manner provided for in the Purchase Agreement, provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 5(b).

(c) No Waiver By Course Of Conduct; Cumulative Remedies. The Purchasers shall not by any act (except by a written instrument pursuant to Section 5(a)), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default under the Transaction Documents or Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Purchasers, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Purchasers of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Purchasers would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

(d) Enforcement Expenses; Indemnification.

(i) Each Guarantor agrees to pay, or reimburse the Purchasers for, all its costs and expenses incurred in collecting against such Guarantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Guarantee and the other Transaction Documents to which such Guarantor is a party, including, without limitation, the reasonable fees and disbursements of counsel to the Purchasers.

(ii) Each Guarantor agrees to pay, and to save the Purchasers harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable in connection with any of the transactions contemplated by this Guarantee.

(iii) Each Guarantor agrees to pay, and to save the Purchasers harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Guarantee to the extent the Company would be required to do so pursuant to the Purchase Agreement.

(iv) The agreements in this Section shall survive repayment of the Obligations and all other amounts payable under the Purchase Agreement and the other Transaction Documents.

(e) Successor and Assigns. This Guarantee shall be binding upon the successors and assigns of each Guarantor and shall inure to the benefit of the Purchasers and their respective successors and assigns; provided that no Guarantor may assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of the Purchasers.

(f) Set-Off. Each Guarantor hereby irrevocably authorizes the Purchasers at any time and from time to time while an Event of Default under any of the Transaction Documents shall have occurred and be continuing, without notice to such Guarantor or any other Guarantor, any such notice being expressly waived by each Guarantor, to set-off and appropriate and apply any and all deposits, credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Purchasers to or for the credit or the account of such Guarantor, or any part thereof in such amounts as the Purchasers may elect, against and on account of the obligations and liabilities of such Guarantor to the Purchasers hereunder and claims of every nature and description of the Purchasers against such Guarantor, in any currency, whether arising hereunder, under the Purchase Agreement, any other Transaction Document or otherwise, as the Purchasers may elect, whether or not the Purchasers have made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. The Purchasers shall notify such Guarantor promptly of any such set-off and the application made by the Purchasers of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Purchasers under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Purchasers may have.

(g) Counterparts. This Guarantee may be executed by one or more of the parties to this Guarantee on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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

(i) Section Headings. The Section headings used in this Guarantee are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

(j) Integration. This Guarantee and the other Transaction Documents represent the agreement of the Guarantors and the Purchasers with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Purchasers relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Transaction Documents.

(k) Governing Laws. All questions concerning the construction, validity, enforcement and interpretation of this Guarantee shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each of the Company and the Guarantors agree that all proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Guarantee (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York, Borough of Manhattan. Each of the Company and the Guarantors hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such proceeding is improper. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Guarantee and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Guarantee or the transactions contemplated hereby.

(l) Acknowledgements. Each Guarantor hereby acknowledges that:

(i) it has been advised by counsel in the negotiation, execution and delivery of this Guarantee and the other Transaction Documents to which it is a party;

(ii) the Purchasers have no fiduciary relationship with or duty to any Guarantor arising out of or in connection with this Guarantee or any of the other Transaction Documents, and the relationship between the Guarantors, on the one hand, and the Purchasers, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(iii) no joint venture is created hereby or by the other Transaction Documents or otherwise exists by virtue of the transactions contemplated hereby among the Guarantors and the Purchasers.

(m) Additional Guarantors. The Company shall cause each of its subsidiaries formed or acquired on or subsequent to the date hereof to become a Guarantor for all purposes of this Guarantee by executing and delivering an Assumption Agreement in the form of Annex 1 hereto.

(n) Release of Guarantors. Each Guarantor will be released from all liability hereunder concurrently with the indefeasible repayment in full of all amounts owed under the Purchase Agreement, the Debentures and the other Transaction Documents.

(o) Seniority. The Obligations of each of the Guarantors hereunder rank senior in priority to any other Indebtedness (as defined in the Purchase Agreement) of such Guarantor.

(p) WAIVER OF JURY TRIAL. **EACH GUARANTOR AND, BY ACCEPTANCE OF THE BENEFITS HEREOF, THE PURCHASERS, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTEE AND FOR ANY COUNTERCLAIM THEREIN.**

****

(Signature Pages Follow)

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee to be duly executed and delivered as of the date first above written.

SG Building Blocks, Inc.

By: ________________________________
Name:
Title:

Endaxi Infrastructure Group, Inc.

By: ________________________________
Name:
Title:

SCHEDULE 1

GUARANTORS

The following are the names, notice addresses and jurisdiction of organization of each Guarantor.

	JURISDICTION OF INCORPORATION	COMPANY OWNED BY PERCENTAGE
SG Building Blocks, Inc.	Delaware	100%
Endaxi Infrastructure Group, Inc.	Delaware	100%

Annex 1 to
SUBSIDIARY GUARANTEE

ASSUMPTION AGREEMENT, dated as of ____ __, ______ made by ______________________________, a ______________ corporation (the "Additional Guarantor"), in favor of the Purchasers pursuant to the Purchase Agreement referred to below. All capitalized terms not defined herein shall have the meaning ascribed to them in such Purchase Agreement.

W I T N E S S E T H :

WHEREAS, SG Blocks, Inc., a Delaware corporation (the "Company") and the Purchasers have entered into a Securities Purchase Agreement, dated as of August 5, 2015 (as amended, supplemented or otherwise modified from time to time, the Purchase Agreement");

WHEREAS, in connection with the Purchase Agreement, the Subsidiaries of the Company (other than the Additional Guarantor) have entered into the Subsidiary Guarantee, dated as of August 5, 2015 (as amended, supplemented or otherwise modified from time to time, the "Guarantee") in favor of the Purchasers;

WHEREAS, the Purchase Agreement requires the Additional Guarantor to become a party to the Guarantee; and

WHEREAS, the Additional Guarantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee;

NOW, THEREFORE, IT IS AGREED:

1. Guarantee. By executing and delivering this Assumption Agreement, the Additional Guarantor, as provided in Section 5(m) of the Guarantee, hereby becomes a party to the Guarantee as a Guarantor thereunder with the same force and effect as if originally named therein as a Guarantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Guarantor thereunder. The information set forth in Annex 1 hereto is hereby added to the information set forth in Schedule 1 to the Guarantee. The Additional Guarantor hereby represents and warrants that each of the representations and warranties contained in Section 3 of the Guarantee is true and correct on and as the date hereof as to such Additional Guarantor (after giving effect to this Assumption Agreement) as if made on and as of such date.

2 . Governing Law. THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONALGUARANTOR]

By: ______________________________
Name:
Title: